

CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

September 22, 2000

To: Interested Parties**Re: Notice of Initiation of SB 1305 Rulemaking Process**

As a participant in California's deregulated electricity market, you may be interested to know that the California Energy Commission has initiated a rulemaking to amend its SB 1305 regulations (pertaining to electricity generation source disclosure). Attached is a copy of the Notice of Proposed Action (NOPA) that is being published in the California Regulatory Notice Register on September 22, 2000. The Notice indicates the Energy Commission's intention to adopt amendments to its regulations implementing the SB 1305 program. Adoption of these amendments is scheduled for the Energy Commission's November 8, 2000 Business Meeting. Also attached are the Express Terms, (Title 20, California Code of Regulations, starting section 1390 (Article 5)), of the proposed regulations, written in underline and strike-out format. The documents are also available on our web page at <http://www.energy.ca.gov/sb1305/> as well as the Initial Statement of Reasons (ISOR), which provides an explanation of the proposed amendments and a summary of the information and alternatives that the Energy Commission considered in drafting the proposed amendments.

Additional copies of the NOPA and Express Terms, as well as copies of the ISOR are available by calling Caryn Holmes, SB 1305 counsel, at (916) 654-4178, or via e-mail at cholmes@energy.state.ca.us.

As noted above, adoption is scheduled for November 8, 2000, and comments can be provided orally either at the adoption hearing or in writing at the address listed in the NOPA by 10:00 am on November 8, 2000. If the Energy Commission decides to adopt changes to the proposed regulations, the law requires an additional fifteen-day notice of those proposed changes. Thus, to the extent that interested parties can provide any recommended changes to us within 30 days, the Energy Commission may be able to incorporate such changes that it deems appropriate into the final package that is adopted on November 8, 2000. Changes that are made within fifteen days of the November 8, 2000 Business Meeting will require postponement of the adoption hearing to a later date. The Energy Commission has worked diligently to respond to the concerns of market participants in drafting the proposed changes. Due to our outreach efforts, we are hopeful that early submission of comments will prove to be a feasible means of reaching consensus on the amendments and allow adoption of a final package on November 8, 2000 and implementation of the new regulations by January 1, 2001. We look forward to your participation in our rulemaking process.

MICHAL C. MOORE
Commissioner and Presiding Member,
Electricity and Natural Gas Committee

Enclosures (2)

NOTICE OF PROPOSED ACTION

FOR ADOPTION OF REGULATIONS GOVERNING ELECTRICITY GENERATION SOURCE DISCLOSURE

California Energy Commission
Docket No. 00-SB-1305

NOTICE

The California Energy Commission ("Commission") proposes to amend regulations under the authority of section 25213 of the Public Resources Code. These regulations are found at Title 20, California Code of Regulations, section 1390 et seq., and implement, interpret, and make specific sections 398.1 - 398.5 of the Public Utilities Code, which were enacted in 1997 in SB 1305 (Stats. 1997, ch. 796, / 1), and sections 25216 and 25216.5 of the Public Resources Code. The amendments clarify definitions, and modify the reporting requirements for generators and retail providers specified in Sections 398.3, 398.4, and 398.5 of the Public Utilities Code. The date set for adoption of the proposed changes to these regulations is as follows:

Commission Business Meeting
November 8, 2000
beginning at 10:00 a.m.
California Energy Commission
Hearing Room A
1516 9th Street
Sacramento, CA 95814

Participants should be aware that any of the proposed regulations could be substantively changed as a result of public comment, staff recommendation, or recommendations from Commissioners. Moreover, changes to the proposed regulations not indicated in the express terms could be added if they improve the clarity or effectiveness of the regulations. If the Commission considers changes to the proposed regulations, pursuant to Government Code section 11346.8, a full copy of the text will be available for at least 15 days prior to the date on which the agency adopts the resulting regulation, and opportunity for public comment will be provided.

Interested persons may present oral statements about the proposed regulations at the adoption hearing, and may provide written comments to the Commission on or before 10:00 a.m. on November 8, 2000, by submitting them to:

Docket Office
California Energy Commission
Docket No. 97-SB-1305
1516 9th Street, MS-4
Sacramento, CA 95814

INFORMATIVE DIGEST OF PROPOSED ACTION

Sections Affected: Sections 1391, 1392, 1393, 1394 and accompanying appendices, found in Title 20, California Code of Regulations.

Background

The Commission was created by the Warren-Alquist State Energy Resources Conservation and Development Act (Public Resources Code section 25000 et seq.). The Act vests the Commission with a wide range of duties and responsibilities related to the development and conservation of energy resources in California. As the agency responsible for establishing the state's energy policy, the Commission collects, stores, analyzes, and disseminates a broad range of information pertaining to electricity generation.

SB 1305, which was enacted in 1997 (Stats. 1997, ch. 796, / 1), imposes a series of requirements on electricity generators, system operators, retail providers, and the Commission. SB 1305 responded to the decisions of the California Legislature, the California Public Utilities Commission (CPUC) and the Federal Energy Regulatory Commission to initiate a significant amount of deregulation in California's electric industry. Under SB 1305, retail providers of electricity service are required to disclose the fuel mix of the electricity they sell to their customers and in promotional materials.¹ Retail providers who make claims about their product (that it is "green", for example, or "environmentally friendly") must disclose their projected fuel mix for the calendar year. Retail providers who make no claims can disclose a default, called Net System Power, which is an estimate prepared by the Commission of the overall fuel mix of electricity consumed within the state. The Commission is responsible for specifying the format of these disclosures. In addition, the Commission collects purchases and sales information from retail providers that make claims about their power and compares that information to both the disclosures and to generation information provided to the Commission by system operators. The results of this comparison are presented to the CPUC, which is responsible for registering retail providers, in an annual report. Finally, the legislation directs the Commission to conduct other activities to assist in implementing the goals of SB 1305.

The Commission adopted regulations implementing SB 1305 in 1998. On March 15, 2000, the Commission adopted an Order Instituting Rulemaking (OIR) to amend these existing regulations. The OIR delegated to the Renewables Committee or a successor committee with comparable powers the authority to preside over the rulemaking. On May 23, 2000, the Renewables Committee was disbanded and its responsibilities were delegated to the Electricity and Natural Gas Committee. The Electricity and Natural Gas Committee will conduct this rulemaking proceeding.

¹ The categories actually include both fuel types (such as natural gas, nuclear), and technology types (such as large and small hydro). For simplicity, this Notice uses the term "fuel mix" to refer to both types of categorization.

Description of the Proposed Regulatory Action

The proposed action can be divided into three parts. The first part consists of minor changes. These include non-substantive changes to several definitions, addition of three new definitions, clarification of the identification numbers to be used by generators, and clarification of mailing requirements. The second part consists of the implementation of a tradable certificates program, in which retail providers can provide certificates created by a Commission software program used by generators to support their claims of purchases of specific sources or types of power. The third part comprises changes to the annual retail provider report and the independent third-party verification requirements applicable to the annual retail provider report.

Comparable Federal Law

There is no comparable Federal law, as states have the sole authority to regulate the terms and conditions of retail electricity services.

Existing Laws and Regulations

There is no existing state law comparable to the provisions of SB 1305. The Commission is subject to other statutory requirements that mandate data collection, analysis, and disclosure, but those provisions direct the Commission to, among other things, assess broad electricity generation and consumption trends, analyze the consequences of those trends, and to forecast electricity demand and supply. Unlike the provisions of SB 1305, these other mandates are not directed at ensuring that individual customers receive information about the fuel mix of the electricity they consume.

Similarly, the CPUC, which regulates California's privately-owned utilities, does not require these utilities to provide information to customers about the fuel mix of the electricity they consume, other than the price, which is established in tariffs approved by the CPUC. Nor are municipal or other publicly-owned utilities otherwise required to specify to customers the fuel mix of the electricity they consume.

Plain English Policy Statement

The broad objectives of the proposed modifications are to: 1) clarify the disclosure guidelines specified in sections 398.3, 398.4, and 398.5 of the Public Utilities Code; 2) institute a tradable certificates program for use by retail providers in supporting claims of specific purchases; and 3) modify the requirements for the annual retail provider report and to replace the current audit requirement for the annual retail provider report with a modified independent third-party verification requirement.

SB 1305 establishes a program in which retail providers provide information to consumers about the fuel mix of the electricity they consume. Under SB 1305, all retail providers must provide an estimate of the fuel mix of the electricity they will provide during the current calendar year. This prospective disclosure must be provided in promotional materials and in quarterly statements to the retail providers' customers. Retail providers can choose to disclose either the state's fuel mix as determined annually by the Commission, or an estimate of the

specific fuel mix sold by the retail supplier.² Retailers who make any claim about the fuel mix or environmental characteristics of their electricity product are required to disclose their actual projected fuel mix. In addition, these retailers must, by April 15 of each year, disclose their actual fuel mix for the previous year to their customers. This information that retail providers present to consumers is compared by the Commission to purchase and sales information provided by retail providers in annual reports to the Commission, along with generation data provided to the Energy Commission by system operators. This information is also subject to independent third-party verification, and a report summarizing the results of those efforts must be provided to the Commission by June 1 of each year. The Commission publishes the results of this comparison in an annual report to the CPUC.

The proposed changes accomplish three objectives. The first objective is to clarify several definitions, add a new definition, modify the identification numbers used by generators, and clarify the mailing requirements for quarterly and annual disclosures.

The second objective is to implement a tradable certificates program. Although the statute refers to the use of a tradable commodity system by retailers to verify claims of specific purchases, the current regulations require retail providers to support such claims by tracing contracts for purchases of electrical energy back to specific generating facilities. The Commission did not include a tradable commodity system approach in the first set of regulations because of concerns about consumer acceptance of the program in its initial stages. The Commission believes that several years of deregulation has resulted in increased consumer understanding of the electricity market and believes that the introduction of tradable certificates is now appropriate. Introduction of a tradable certificates program will allow generators and/or wholesalers to separate the electricity energy portion of a generating facility's output from the fuel characteristic of the generation. Thus, generators could sell the electrical energy produced by a facility to one entity and the corresponding amount of fuel characteristic to another. In turn, retail providers would not need to demonstrate that they had obtained the electrical energy from any particular source, but only that they had obtained the correct amount of fuel characteristic from the types of sources claimed in their disclosures. Tradable certificates provide a simple mechanism to demonstrate that the dollars expended by consumers for a specific electricity product can be traced back to generating facilities of the specific fuel type claimed for that product.

The third objective of the rulemaking is to consider changes to the annual retail provider report process. The most significant changes affect the independent third-party verification requirements applicable to the sales and purchase information provided to the Commission by retail providers. Currently, the Commission's regulations require retail providers to provide the results of an independent third-party audit of the annual retail provider report filed with the Commission on March 1 of each year. However, the audit requirement has proved to be difficult to comply with, both because of expense, and because of the unfamiliarity of auditors

² The Commission is required to issue a report on April 15 of each year establishing the state's fuel mix (referred to as net system power).

with electricity transactions. As a result, the Commission hired the accounting firm of Pricewaterhouse Coopers to develop a simplified verification process. The proposed modifications reflect the "agreed-upon procedures" fashioned during this process. In addition, the informational requirements for the annual retail provider reports have been amended to provide additional clarification, and to specify the requirements applicable to purchases and sales from electricity pools. The use of spreadsheet forms developed by the Commission to provide this information will be required, as will electronic filing, provided that retail providers have the capability of doing so. Public entities providing electric services are exempt from the requirements of the agreed-upon procedures, provided that they only sell one product to their customers and approve at a public meeting of the board of directors the submission of an attestation that the annual report provided to the Commission is true and correct.

The express terms of the proposed action are available from the agency contact person named in this notice. The Commission drafted these amendments in plain English pursuant to Government Code section 11342(e) and 11346.2(a)(1). Small businesses may be affected by these amendments in that the means by which they comply with the disclosure and reporting requirements mandated by SB 1305 may be modified. However, each of the proposed amendments either clarifies without increasing existing requirements, or provides additional options that reduce reporting requirements.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

Local Mandate Determination

Pursuant to Government Code section 11346.5(a)(5), the Commission is required to determine whether the proposed regulations, if adopted, will impose a mandate on local agencies or school districts, and if so, whether the mandate requires state reimbursement. The Legislature, in adopting SB 1305, found that it does impose a state-mandated local program, but that no reimbursement is required because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction or changes the definition of a crime. (See Stats. 1997, ch. 796, / 4) The Commission relied on these conclusions in the original rulemaking, noting in addition that the Commission's regulations implementing SB 1305 merely specified the format of the reporting requirements mandated by SB 1305 and did not create new requirements. In this rulemaking, the Commission is considering modifications that do not increase any requirements; they either clarify existing requirements or provide less burdensome alternatives for complying with the statutory mandates. Thus, the modifications proposed will not impose a mandate on local agencies or school districts.

Cost/Savings Estimate

Pursuant to Government Code section 11346.5(a)(6), the Commission must determine whether the proposed amendments, if adopted, will impose any costs or savings to any state agency, or costs to any local agencies or school districts that are required to be reimbursed under Government Code section 17500 et seq., and whether there are other non-discretionary cost or savings imposed on

local agencies or cost or savings in federal funding to the state. A completed Fiscal Impact Statement form adopted by the Department of Finance is included in this submittal.

The only state agencies other than the Commission that may be affected by any of the proposed modifications are irrigation districts that own generation and/or provide electric services.³ Here, as with the municipal utility districts discussed below, the effects will only occur if a district chooses to make claims about its electricity product(s), thereby triggering annual reporting and verification requirements, or if the district chooses to participate in the Commission's voluntary certificates program. However, although the reporting requirements are slightly different for generators who participate in the Commission's certificate program than for those who do not, there should be no difference in reporting costs. Similarly, minor changes to the annual reporting requirements for districts that make claims about their product(s) should have no effect on the costs incurred to prepare those reports. In addition, the proposed regulations contain an exemption from the verification requirements for those districts who make claims, but only offer one product to their customers. For those districts, their verification costs will be reduced from the amount required to conduct the audit currently required to zero. For those districts offering more than one product, the verification costs will be reduced from the amount required to conduct the audit currently required to the costs required to conduct the proposed agreed-upon procedures.

In addition, the minor modifications and the substitution of a modified independent third-party verification process should have no effect on the Commission. The implementation of a tradable certificates program will have an effect in that Commission staff will be required to distribute copies of a Commission software program that creates certificates to generators who request it. However, these efforts should be accompanied by a corresponding reduction in the efforts required to compile the Commission's annual report to the CPUC when tradable certificates are used, because they will be easier to document than a series of contracts for the purchase of electrical energy. Thus, the Commission estimates that there will be no net costs or savings to our agency. Finally, these amendments will result in no cost or savings in federal funding to the state.

With respect to local agencies, the Commission notes that most local agencies are unaffected by the SB 1305 requirements. However, the state's 55 public electric utilities are included in the definition of local agencies under the Government Code. As a result, we evaluated whether the proposed modifications would impose costs on them that are required to be reimbursed under Government Code section 17500 et seq., and whether there are other non-discretionary cost or savings imposed on them. The minor changes proposed will have effects only if a district chooses to make claims about its electricity product(s), thereby triggering annual reporting and verification requirements, or if the district chooses to participate in the Commission's voluntary certificates program. However, although the reporting requirements are slightly different for generators who participate in the Commission's certificate program than for those who do not, there should be no difference in reporting costs. Similarly, minor changes to the annual reporting requirements for districts that make claims about their product(s) should have no effect on the costs incurred to prepare those reports. In addition, the proposed regulations contain an exemption from the

³ Water Code/ 20570 states that irrigation districts are state agencies.

verification requirements for those districts who makes claims, but only offer one product to their customers. For those districts, their verification costs will be reduced from the amount required to conduct the audit currently required to zero. For those districts offering more than one product, the verification costs will be reduced from the amount required to conduct the audit currently required to the costs required to conduct the proposed agreed-upon procedures.

Thus, we believe that the proposed modifications, if adopted, will not impose any costs to any state agency, or costs to any local agencies or school districts that are required to be reimbursed under Government Code section 17500 et seq., nor any other non-discretionary cost imposed on local agencies, nor cost or savings in federal funding to the state. State and local agencies that provide electrical services will see a reduction in their verification costs, as discussed above.

Because this NOPA must be filed before the Commission holds its adoption hearing, this preliminary determination is based solely on the nature of the proposed changes. The Committee held a preliminary workshop on the rulemaking on July 14, but received no comments on costs or savings. The Committee anticipates that there may be discussion of costs and savings associated with compliance with the format of the disclosure and reporting requirements during the 45-day public comment period. Any such comments will be considered by the Commission in the adoption hearing and will be responded to in the Final Statement of Reasons.

Significant Adverse Economic Business Impact Information

Government Code section 11346.5(a)(8) requires the Commission, in adopting or amending its regulations, to determine whether the action will have a significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states, and, if the Commission determines that it shall not, to make a declaration to that effect in this Notice of Proposed Action. The Commission has not yet completed the rulemaking process, but at this time, no significant adverse economic impact on business including the ability of California businesses to compete with businesses in other states is anticipated from the proposed regulations.

One of the results of deregulation was that more businesses were allowed to compete for the provision of electricity services to California consumers. The Commission has seen both new businesses created and expansion of existing businesses in order to take advantage of the new markets. The SB 1305 program provides opportunities for businesses to target niche markets by specifying the fuel mix of the electricity they propose to sell. Because the Legislature has required retailers who choose to market electricity products for which they make claims to provide information to support those claims, the program imposes costs on retailers who take advantage of this opportunity. However, these costs are imposed by the legislation itself, not the Commission's specification of the disclosure and reporting format, and retail providers would presumably not incur them if the additional earnings created by exploiting these new markets did not outweigh the costs.

Moreover, the specific amendments under consideration in this rulemaking should reduce any economic impact on business caused by the legislation. The minor changes and clarifications should have no effect at all, while the introduction of a tradable certificates program should result

in a cost savings to those retail providers who make claims of specific purchases for their electricity products and choose to use tradable certificates in lieu of a contract path approach. Generators who use the Commission's certificates software to create tradable certificates may incur some costs as a result of the associated reporting requirements, but enrollment is voluntary and should in any event allow them to command a higher price for their product, as the verification costs will be less than if a contract path approach were used. Finally, the changes in the annual retail supplier report and independent third-party verification should also result in lower costs. The informational requirements are merely clarified, not increased, and the use of agreed-upon procedures in lieu of an audit should reduce compliance costs.

Because this NOPA must be filed before the Commission holds its adoption hearing, this preliminary determination is based solely on the nature of the proposed changes. The Committee held a preliminary workshop on the rulemaking on July 14. The only comments received at that hearing on business impacts were that retail providers were eager to see the changes implemented. The Committee anticipates that there may be discussion of the business impacts associated with compliance with the format of the disclosure and reporting requirements during the 45-day public comment period. Any such comments will be considered by the Commission in the adoption hearing and will be responded to in the Final Statement of Reasons.

Cost Impact On Private Persons Or Directly Affected Businesses

Pursuant to Government Code section 11346.5(a)(9), the Commission has prepared this statement of the potential cost impact of the proposed regulations. The Commission staff has determined that if adopted, the regulations will not have a potential cost impact on private persons. The Commission's staff determination on the potential cost impact of the amendments on directly affected businesses is identical to the one provided in the previous section on significant adverse economic business impact information.

Results Of Assessment Required By Section 11346.3(b)

Government Code section 11346.5(a)(10) requires the Commission to include a statement of the assessment required by Government Code section 11346.3(b), which in turn requires all state agencies to assess whether and to what extent their proposed regulations affect the creation or elimination of jobs in California, the creation or new businesses or the elimination of existing businesses within the state, and the expansion of businesses currently doing business within the state. It is likely that the proposed modifications will have little to no effect on the creation or elimination of jobs and new businesses within the state, and little to no effect on the expansion of businesses currently doing business within the state. Any effect they do have will be to encourage the development or expansion of businesses as compliance costs for supporting claims about electricity products will be reduced.

Housing Effects Statement

Pursuant to Government Code section 11346.5(a)(11), the Commission has determined, based on the nature of the proposed regulations, that they will not have a significant effect on housing costs.

Consideration Of Alternative Proposals

Pursuant to Government Code section 11346.5(a)(12), the Commission must, before adopting the proposed regulations, determine that no alternative considered by it would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Results Of Assessment Required By Section 11346.54

Section 11346.54 requires all state agencies proposing to amend regulations to assess whether and to what extent the action will affect the creation or elimination of jobs in California, the creation of new businesses or the elimination of business within the State of California, and the expansion of businesses currently doing business within the State of California. This is identical to the assessment required by Section 11346.4(a)(10) and Section 11346.3(b). The results of this assessment are discussed above.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT

The Commission has prepared an initial statement of reasons for the proposed regulations. To obtain a copy of the initial statement of reasons or the express terms, please contact Lynn Tien-Tran at (916) 654-3951 or by e-mail at mtran@energy.state.ca.us. Additionally, the Commission has available all the information upon which the proposed regulations are based; to obtain copies, please contact the Docket Office at the above address, or call (916) 654-5076. If the Commission considers changes to the proposed regulations, pursuant to Government Code section 11346.8, a full copy of the text will be available for at least 15 days prior to the date on which the agency adopts the resulting regulation, and opportunity for public comment will be provided. The Commission's Public Advisor is available to assist any person who wishes to participate in this proceeding. For assistance from the Public Advisor, please call Roberta Mendonca at (916) 654-4489 or toll-free in California at (800) 822-6228, or by e-mail at rmendonc@energy.state.ca.us. Any inquiries regarding this proposed action should be directed to Caryn Holmes; she can be reached at (916) 654-4178 or by e-mail at cholmes@energy.state.ca.us. As stated above, any interested person may present oral statements about the proposed regulations at the November 8 adoption hearing. They may also provide written comments to the Commission on or before 10:00 a.m. on November 8, 2000, by submitting them to the Commission's Docket Office at the address identified above.

STATUTORY AUTHORITY AND REFERENCE

Authority: Public Resources Code Section 25213; Public Utilities Code Sections 398.4, 398.5

Reference: Public Resources Code Sections 25216, 25216.5; Public Utilities Code Sections 398.1 - 398.5

ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)

STD. 399 (Rev. 2-98)

See SAM Sections 6600 - 6680 for Instructions and Code Citations

DEPARTMENT NAME California Energy Commission	CONTACT PERSON Caryn Holmes, Attorney	TELEPHONE NUMBER (916) 654-4178
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Proposed amendments to Regulations Governing Electricity Generation Source Disclosure (Title 20, California Code of Regulations, / 1390 et seq.)		NOTICE FILE NUMBER

ECONOMIC IMPACT STATEMENT

A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

☒ a. Impacts businesses and/or employees

☒ b. Impacts small businesses

☐ c. Impacts jobs or occupations

☐ d. Impacts California competitiveness

☒ e. Imposes reporting requirements

☒ f. Imposes prescriptive instead of performance standards

☐ g. Impacts individuals

☐ h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.)

h. (cont.) _____

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: 80 Describe the types of businesses (Include nonprofits): Entities offering electric service in California and qualifying generators, the number may be bigger if more generators participate in the future.

Enter the number or percentage of total businesses impacted that are small businesses: estimated 7-9%

3. Enter the number of businesses that will be created: None eliminated: None

Explain: Compliance not expected to impose a significant impact on the profitability of businesses in California and could in fact increase the profitability of participating business by reducing costs.

4. Indicate the geographic extent of impacts: ☒ Statewide Local or regional (list areas) _____

5. Enter the number of jobs created: few or eliminated: none Describe the types of jobs or occupations impacted: Administrative, Accounting, Auditing

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

Yes ☒ No ☐ If yes, explain briefly: _____

B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? Zero dollars to the generator or retail provided that does not use the certificate program to -\$2,670,000 (in 2000 dollars) for those that take advantage of the certificate program and the AUP

a. Initial costs for a small business: \$ 0 Annual ongoing costs: \$ -5,000 Years: 5

b. Initial costs for a typical business: \$ 0 Annual ongoing costs: \$ -7,500 Years: 5

c. Initial costs for an individual: \$ 0 Annual ongoing costs: \$ 0 Years: na

d. Describe other economic costs that may occur: None

2. If

multiple industries are impacted, enter the share of total costs for each industry: 90% of the cost attributed to entities offering electric service in California, 10% of the cost attributed to qualifying electric power generators.

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): Zero dollars to the generator or retail provided that does not use the certificate program to -\$5,000 (in 2000 dollars) for those that take advantage of the certificate program and the Agreed Upon Procedures.

4. Will this regulation directly impact housing costs? Yes ☒ No ☐ If yes, enter the annual dollar cost per housing unit: \$ _____ and the number of units: _____

5. Are there comparable Federal regulations? Yes ☒ No ☐ Explain the need for State regulation given the existence or absence of Federal regulations: The regulations governing the Electricity Power Source Disclosure were created by SB 1305 to protect consumer by requiring electric service providers to provide their customers with information about the source of the electric power they are paying for and consume. There is no similar federal regulation for electric power.

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ None

C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: The implementation of this amendment to the existing regulations will reduce the cost of compliance by replacing the audit requirement with a verification requirement using an Agreed Upon Procedure. The change in requirements will reduce the cost to providers and presumably this cost will be passed on to consumers. It also provides an economic benefit in making the fuel attribute of electricity products more marketable.

2. Are the benefits the result of: specific statutory requirements, or ☒ goals developed by the agency based on broad statutory authority? Explain: Proposal will simplify mandatory reporting and verification requirements of generators and electric service providers that are making specific claims about the electricity they are providing.

3. What are the total statewide benefits from this regulation over its lifetime? -\$2,670,000 (in 2000 dollars)

D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: No alternatives were identified that would provide the consumer protection required by the enabling legislation and at the same time reduce the cost of compliance.

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: \$ _____	Cost: \$ _____
Alternative 1:	Benefit: \$ _____	Cost: \$ _____
Alternative 2:	Benefit: \$ _____	Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: Because the use of certificates voluntary, we do not know how many generators will use them to support their production claims, or how many retail suppliers will use them to support their claim of a specific purchase. Therefore, quantification is difficult.

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☒ Yes ☐ No

Explain: The performance standard considered failed to provide an adequate level of consumer protection.

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.)

Cal/EPA boards, offices and departments are subject to the following additional requirements per Health and Safety Code section 57005.

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? Yes ☒ No (If No, skip the rest of this section)

2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: \$ _____ Cost-effectiveness ratio: _____

Alternative 1: \$ _____ Cost-effectiveness ratio: _____

Alternative 2: \$ _____ Cost-effectiveness ratio: _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years)

1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

a. is provided in (Item _____, Budget Act of _____) or (Chapter _____ Statutes of _____)

b. will be requested in the _____ Governor's Budget for appropriation in Budget Act of _____
(FISCAL YEAR)

2. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

a. implements the Federal mandate contained in _____

b. implements the court mandate set forth by the _____ court in the case of _____ vs. _____

c. _____ implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____ election;

d. is issued only in response to a specific request from the _____, which is/are the only local entity(s) affected;

e. will be fully financed from the _____ (FEES, REVENUE, ETC.) authorized by Section _____

_____ of the _____ Code;

f. _____ provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit.

- X** 3. Savings of approximately -\$167,500 annually.
4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.
5. No fiscal impact exists because this regulation does not affect any local entity or program.
6. Other.

B. FISCAL EFFECT ON STATE GOVERNMENT (Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

- X** 1. Additional expenditures of approximately \$9,375 the current State Fiscal Year. It is anticipated that State agencies will:
- X** a. able to absorb these additional costs within their existing budgets and resources.
- X** b. request an increase in the currently authorized budget level for the 2001/2002 fiscal year.
- X** 2. Savings of approximately -\$15,000 in the current State Fiscal Year.
3. No fiscal impact exists because this regulation does not affect any State agency or program.
4. Other.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS (Indicate appropriate boxes 1 through 4 and attach calculations and assumptions)

1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year.
2. Savings of approximately \$ _____ in the current State Fiscal Year.
- X** 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
4. Other.

SIGNATURE		TITLE	
AGENCY SECRETARY ¹		DATE	
APPROVAL/CONCURRENCE			
DEPARTMENT OF FINANCE ²		DATE	
APPROVAL/CONCURRENCE			

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
2. Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399. However, Finance must immediately receive a copy of each STD. 399 submitted to OAL without Finance signature, and Finance may subsequently question the no fiscal impact finding of a state agency.

Economic Impact Case - All participants

	Sm Bus.			Lg. Bus.		
	Savings	Inflation	5yr T Bill	Savings	Inflation	5yr T Bill
		3.00%	6.06%		3.00%	6.06%
Yr 1	5000	\$ 5,150		7500	\$ 7,725	
Yr 2	5000	\$ 5,305		7500	\$ 7,957	
Yr 3	5000	\$ 5,464		7500	\$ 8,195	
Yr 4	5000	\$ 5,628		7500	\$ 8,441	
Yr 5	5000	\$ 5,796		7500	\$ 8,695	
NPV (\$2000\$)		<u>\$22,918</u>			<u>\$ 34,376</u>	
	Sm Bus.			Lg. Bus		
	7	\$22,918	\$ 160,423	73	\$ 34,376	\$ 2,509,476
	Total Savings		\$ 160,423	+	\$ 2,509,476	= \$ 2,669,899
					Say	<u>\$ 2,670,000</u>

Inflation rate from DOF, per telephone conversion with Ted Gibson, 322-2263
 Cost of Capital rate is a five year US Tresuray Bill, per discussion w/ Ted Gibson

sn: OALNPV2.xls
 Prepared by Drake Johnson

Municipal Case - Back up for Fiscal Impact Statement Item A-3

	AUP			Audit		
	Savings	Inflation	5 yr T Bill	Savings	Inflation	5 yr T Bill
		3.00%	6.06%		3.00%	6.06%
Yr 1	7500	\$ 7,500		20000	\$ 20,000	
Yr 2	7500	\$ 7,725		20000	\$ 20,600	
Yr 3	7500	\$ 7,957		20000	\$ 21,218	
Yr 4						
Yr 5						
NPV (2000\$)			<u>\$20,608</u>			<u>\$ 54,955</u>
	AUP			Audit		
	1	\$20,608	\$ 20,608	1	\$ 54,955	\$ 439,642
	Total Savings		\$ 20,608	+	\$ 439,642	= \$ 460,250
					Say	<u>\$ 460,000</u>

Inflation rate from DOF, per telephone conversion with Ted Gibson, 322-2263
 Cost of Capital rate is a five year US Tresuray Bill, per discussion w/ Ted Gibson

sn: OALNPVMU.xls
 Prepared by Drake Johnson

	CEC	5 yr T Bill
	Salary	Inflation
	0.25 PY	3.00% 6.06%
Yr 1	18750	\$ 18,750
Yr 2	18750	\$ 19,313
Yr 3	18750	\$ 19,892
Yr 4		
Yr 5		
NPV (2000\$)		<u>\$51,521</u>

Assumes 0.25 PY to support the Energy Commission Certificate Program (0.25 x \$75,000/yr salary)
 Fiscal Yr. 2000/20001 will be approx. half over when regulations are implemented, assume cost for
 this fiscal year = \$ 9,375.

The first year cost will be absorb within existing budgets and resources. The following two fiscal
 years a request for an increase in the currently authorized budget level will be submitted.

Inflation rate from DOF, per telephone conversion with Ted Gibson, 322-2263
 Cost of Capital rate is a five year US Tresuray Bill, per discussion w/ Ted Gibson

sn: OALNPVCEC.xls
 Prepared by Drake Johnson

Article 5. Electricity Generation Source Disclosure

/1391. Definitions

(a) Claim that identifies any of a retail ~~supplier's~~ provider's electricity sources as different from net system power or claim of specific purchases means any statement that is made to consumers by a retail ~~supplier~~ provider for the purpose of marketing any electricity product and that contains either:

~~(1) a reference to the type of fuel used to generate the electricity product offered for sale by the retail supplier, other than disclosure of net system power; or~~

~~(2) a reference to use of an eligible renewable to generate, in part or in whole, the electricity product offered for sale by the retail supplier~~ provider, other than disclosure of net system power; or

~~(3) a statement that either a specific attribute of the electricity product or of its use~~ related to the generator creates an environmental effect.

[(b) — (e): no changes]

(f) Fuel type attribute means the fuel or technology type used to generate a quantity of kilowatt hours, specified using the categories identified in subsections (d)(1)(A) and (B) of section 1393.

(g) Generating facility output means the electrical energy and/or fuel type attribute, denominated in kilowatt hours, that is produced by a specific generating facility.

(h) Generating unit means a device that converts mechanical, chemical, electromagnetic, or thermal energy into electricity and that:

(1) has an electric output capable of being separately identified and metered;

(2) is located within the Western Systems Coordinating Council interconnected grid; and

(3) is capable of producing electrical energy in excess of a generation station's internal power requirements.

(i) Generator means the initial seller of electrical energy produced by a generating unit.

(j) Independent System Operator or ISO means the entity that is subject to the requirements of Section 345 et seq. of the Public Utilities Code.

(ik) Large hydroelectric means the power source created when water flows from a higher elevation to a lower elevation and that is converted to electrical energy in one or more generators at a single facility, the sum capacity of which exceeds 30 megawatts.

(jl) Local publicly owned electric utility that does not utilize the Independent System Operator means any of the following entities that owns generation facilities that are not individually metered by the ISO: (1) a municipality or municipal corporation operating as a public utility district furnishing electric services ; (2) an irrigation district furnishing electric services; or (3) a joint powers authority that includes one or more of the entities identified in (1) or (2) and that owns generation or transmission facilities, or furnishes electric services over its own or its members' electric distribution system.

(km) Net electricity generated means electricity generated by any generating facility, less any generation used on-site, sold through an over-the-fence transaction, as defined in Section 218 of the Public Utilities Code, or sold or transferred to an affiliate as defined in Section 372(a) of the Public Utilities Code.

(ln) Out-of-State power means power generated entirely outside the state which is sold for wholesale or retail purposes in California.

(o) "Pool" means an entity into which multiple generators deliver generating facility output and out of which multiple retail providers purchase generating facility output, such that buyer and seller may not have knowledge of each other's identities. The amount of electrical energy delivered into and purchased from the pool must be equal, and the amount of fuel type attribute delivered into the pool must be equal to or greater than the amount of fuel type attribute purchased from the pool.

(mp) Product-specific written promotional materials that are distributed to consumers means any paper, electronic, or other media that contain words pertaining to a specific electricity product being advertised or offered and that are distributed to consumers or made available over the Internet. It does not include advertisements and notices in general circulation media.

(nq) Report electronically means to provide files in either a database or spreadsheet format that can be read by the most recent version of either MicrosoftTM Excel or MicrosoftTM Access.

(or) Retail supplier" or "retail provider means an entity that offers an electricity product for sale to retail consumers in California.

(ps) Scheduling Coordinator means any entity certified by the Independent System Operator for the purposes of undertaking the functions specified in Section 2.2.6 of the

Independent System Operator Tariff. (Restated and Amended Tariff of the California Independent System Operator Corporation, August 15, 1997.)

(qt) ~~Specific purchase means a transaction in which the sale of electrical energy is—~~
generating facility output is traceable to specific generating facilities and which provides
commercial verification that the generating facilitiesy output ~~claimed have generated~~
~~electrical energy that~~ has been sold once and only once to retail consumers.

(ru) System Operator means the Independent System Operator as defined in subsection
(h) of this section, or a local publicly owned electric utility that does not utilize the
Independent System Operator, as defined in subsection (j) of this section.

NOTE: Authority cited: Section 25213, Public Resources Code; and Sections 398.3 -
398.5, Public Utilities Code. Reference: Sections 25216, 25216.5, Public Resources
Code; and Sections 398.1 - 398.5, Public Utilities Code.

/1392. Generation Disclosure

[(a): no changes]

(b) Content and Format of Submissions to the System Operator

(1) General Information:

[(A) -(B): no changes]

(C) For each generating facility that generates electrical energy consumed in
California, the generating facility name, location, either by street address or
by longitude and latitude, and an identification number provided by the
~~Western Systems Coordinating Council~~ U.S. Energy Information Agency,
or, in the event that the ~~Western Systems Coordinating Council~~ U.S.
Energy Information Agency does not provide an identification number to
the generating facility, by the Energy Commission.

[(2) — (3): no changes]

[(c): no changes]

(d) The following requirements apply to generation and fuel information that is reported
for any generation that is sold in an electricity product for which a claim of specific
purchases is made.

[(1): no changes]

(2) If generation or fuel information for electrical energy that is sold in an electricity product for which a claim of specific purchases is made is not reported pursuant to subsection (a) of this section, the generator shall report electronically the information specified in subsection (d)(2)(A) - (C) of this section to the Energy Commission by March 1 of each year beginning in 1999 for each generating facility that generated such electrical energy in California. If the information is provided to the Energy Commission in another filing, the generator may submit a statement identifying the filing and section of the filing in which the information is contained in lieu of a separate filing pursuant to this subsection.

(A) General Information:

[1. — 2.: no changes]

3. For each generating facility, the generating facility name, location, either by street address or by longitude and latitude, and an identification number provided by the ~~Western Systems Coordinating Council~~ U.S. Energy Information Agency, or, in the event that the ~~Western Systems Coordinating Council~~ U.S. Energy Information Agency does not provide an identification number to the generating facility, by the Energy Commission.

[(B) - (C): no changes]

(3) When a retail ~~supplier's~~ provider's claim of specific purchases mandates that a generator comply with the reporting requirements of subsection (d)(2) of this section, the retail ~~supplier~~ provider shall inform the generator that he or she must comply with these reporting requirements.

NOTE: Authority cited: Section 25213, Public Resources Code; and Sections 398.3, 398.5, Public Utilities Code. Reference: Sections 25216, 25216.5, Public Resources Code; and Sections 398.3 and 398.5, Public Utilities Code.

/1393. Retail Disclosure to Consumers

[(a): no changes]

(b) Pursuant to section 398.4 of the Public Utilities Code, each retail ~~supplier~~ provider shall disclose to consumers the fuel mix of each electricity product offered, using the

schedule and format specified in this section. For each electricity product, the retail ~~supplier~~ provider shall do the following:

(1) A retail ~~supplier~~ provider that makes a claim of specific purchases shall:

[(A) — (C): no changes]

(2) A retail ~~supplier~~ provider that does not make any claims of specific purchases shall:

[(A) — (C): no changes]

(c) Each retail ~~supplier~~ provider shall disclose the information required in this section to consumers according to the following schedule:

(1) Marketing disclosures shall be provided in all product-specific written promotional materials that are distributed to consumers, as defined in subsection ~~mp~~ of section 1391 of these regulations.

(2) Quarterly disclosures shall be provided ~~in writing by United States mail~~ to consumers of the electricity product ~~and the Energy Commission~~ by the end of the first complete billing cycle for each quarter, beginning with the January 1999 quarter, using the power content label. For purposes of this section, quarters shall begin in January, April, July, and October of each year. Retail providers may provide quarterly disclosures to consumers via the Internet provided that the consumer has consented to receiving Internet notice in lieu of service by United States mail.

(3) Annual disclosures shall be provided ~~in writing by United States mail~~ to consumers of the electricity product ~~and to the Energy Commission~~ on or before April 15 of each year beginning in 1999. Retail providers may provide annual disclosures to consumers via the Internet, provided that the consumer has consented to receiving Internet notice in lieu of service by United States mail.

(d) Each retail ~~supplier~~ provider shall disclose the following information in all power content labels about the fuel mix of the electricity product and of net system power:

(1) The power content labels containing general disclosures shall meet the following requirements:

[(A):no changes]

(B) The retail ~~supplier~~ provider shall include the following subcategories within the eligible renewable category, provided however, that the retail ~~supplier~~ provider is not required to display the fuel mix percentages for these subcategories in general disclosures for a product for which a claim of specific purchases was made:

[1. — 5.: no changes]

(C) Calculation

1. For each electricity product for which no claim of specific purchases has been made, the fuel mix displayed shall be identical to that displayed for net system power. For each electricity product for which a claim of specific purchases has been made, the percentage of each fuel type category or subcategory that is specified shall be calculated by adding the contribution from each specific purchase in the electricity product to the contribution from all other purchases, if any, for that fuel type category or subcategory, as shown by the following formula: $w_1(x) + w_2(y)$.

a. w_1 is the percentage of electricity in this electricity product the retail ~~supplier~~ provider expects to provide through specific purchases;

[b.: no changes]

c. w_2 is the percentage of electricity in the electricity product the retail ~~supplier~~ provider expects to provide through sources other than specific purchases; and

[d.: no changes]

[2.: no changes]

(2) If a retail ~~supplier~~ provider makes a claim of specific purchases, the annual disclosure shall consist of the fuel mix of the electricity product sold to consumers during the previous calendar year. In addition, if the percentage of any fuel type category or subcategory contained in any general disclosure made during the previous calendar year for that electricity product varies by more than plus or minus five percentage points from the percentage provided in the annual disclosure, the fuel mix information displayed in the general disclosure that varies the most from this annual disclosure shall be displayed.

[(A): no changes]

(B) If the fuel mix information for the electricity product contained in a general disclosure is required to be displayed pursuant to subsection (d)(2), the retail ~~supplier~~ provider shall also provide an explanation of why there is a difference between the information contained in the general disclosure and the information contained in the annual disclosure.

(e) Each retail ~~supplier~~ provider shall provide general and annual disclosures for each electricity product offered using a power content label. The power content label shall use the following format:

[(1): no changes]

(2) Location of the power content label.

(A) If the retail ~~supplier~~ provider offers materials that consist of more than one page the power content label or a note telling the consumer where the power content label can be found, shall appear on the cover page or the first facing page. If a note is used to tell the consumer where the power content label can be found, the note shall appear in a type size no smaller than 10 point.

[(B): no changes]

[(3) — (4): no changes]

(5) At the bottom of the box containing the power content label, the following note shall appear: For specific information about this electricity product, contact [Company Name]. For general information about the Power Content Label, contact the California Energy Commission at 1-800-555-7794 or www.energy.ca.gov/consumer , where Company Name is the name of the retail ~~supplier~~ provider. This note shall appear in a type size no smaller than 8 point, and shall be set off from the upper portion of the box by a hairline.

(6) The power content label containing general disclosures shall appear in the following format:

[(A): no changes]

(B) Fuel mix information for the electricity product or products being sold and for net system power shall be displayed in a table format, and shall be organized as follows:

[1. — 3.: *no changes*]

4. The second column shall display the fuel mix information for the electricity product being sold. The first row of the second column shall display a heading of the product name, bolded and in all capital letters. Immediately next to the product name in the first row of the second column shall be a footnote marker, directing the reader to the footnote specified in subsection (e)(6)(C)(1).

Immediately below the product name shall be the subheading (projected) . The subsequent rows of the column shall display the fuel mix information for the electricity product being sold. The fuel mix information shall be rounded to the nearest percent, expressed using a percent sign, and may, but need not, include the percentages for the eligible renewable subcategories. The final row for this column shall read 100%. The percentages for the categories shall be aligned and displayed in bold, and the percentages for the eligible renewable subcategories, if any, shall be aligned to the right of the percentages for the categories. If the retail ~~supplier~~ provider is not making a claim of specific purchases for this electricity product, the fuel mix information displayed for the electricity product shall be identical to that displayed for net system power.

5. Power content labels containing marketing disclosures may contain other columns to the right of the second column to display fuel mix information for other products being sold by the retail ~~supplier~~ provider. Each of these columns shall be in the same format specified in subsection (e)(6)(B)4. of this section. If fuel mix information for other products is provided, each product name shall be immediately followed by a footnote marker, directing the reader to the footnote specified in subsection (e)(6)(C)1.

[6. *no changes*]

(C) Footnotes shall appear at the bottom of the power content label as follows:

1. The first footnote shall read, [percentage A] % of [Product Name] is specifically purchased from individual ~~suppliers~~ providers. , where Percentage A is the percentage of electricity in this electricity product the retail ~~supplier~~ provider expects to provide through specific purchases, and Product Name is the name of the electricity product. If fuel mix information for more

than one product is provided in the power content label, the footnote shall list for each electricity product the percentages of the product that the retail ~~supplier~~ provider expects to provide through specific purchases.

[2.: *no changes*]

(D) An example of a power content label that meets the requirements for general disclosures made by a retail ~~supplier~~ provider that makes a claim of specific purchases is shown in Appendix A-1 to these regulations. An example of a power content label that meets the requirements for general disclosures made by a retail ~~supplier~~ provider that does not make a claim of specific purchases is shown in Appendix ~~B~~A-2 to these regulations. An example of a power content label that meets the requirements for general disclosures for more than one product is shown in Appendix ~~C~~A-3 to these regulations.

(7) Each retail ~~supplier~~ provider shall provide a power content label containing an annual disclosure for each electricity product for which it made a claim of specific purchases during the previous calendar year, using the following format:

[(A) — (B): *no changes*]

(C) Comparison of General Disclosures to Annual Disclosure

1. If the percentage of any fuel type category or subcategory contained in any general disclosure made during the previous calendar year for that electricity product varies by more than plus or minus five percentage points from the percentage provided in the annual disclosure, a third column shall be displayed on the power content label.

a. If a third column is required, it shall contain the fuel mix information displayed in the general disclosure that varies the most from this annual disclosure. The first row of the third column shall contain the heading **Projected Power Mix**, bolded and in all capital letters. Immediately next to the heading **Actual Power Mix** shall be a footnote marker, directing the reader to the footnote specified in subsection (e)(~~67~~)(C)1.c. The subsequent rows shall display the fuel mix information for the electricity product displayed in the general disclosure that varies the most from this annual

disclosure. This information shall be displayed in the format specified in subsection (e)(6)(B)4. of this section.

[b.: no changes]

c. Immediately below the last row in the power content label, the retail ~~supplier~~ provider shall provide a footnote containing an explanation of why there is a difference between the information contained in the general disclosure and the information contained in the annual disclosure.

2. If no percentage of any fuel type category or subcategory contained in any general disclosure made during the previous calendar year varies by more than plus or minus five percentage points from the percentage in the electricity product sold, the following statement shall be displayed immediately below the last row in the power content label: For each category, the percentage [Company Name] projected for [Year] was within plus or minus five percentage points of the actual percentage , where Company Name is the name of the retail ~~supplier~~ provider, and Year means the previous calendar year. The company name shall be bolded.

(D) An example of a power content label that meets the requirements for an annual disclosure not requiring inclusion of any previous year s general disclosures is shown in Appendix ~~D~~A-4 to these regulations. An example of a power content label that meets the requirements for an annual disclosure requiring inclusion of a previous year s general disclosure is shown in Appendix ~~E~~A-5 to these regulations

NOTE: Authority cited: Section 25213, Public Resources Code; Section 398.4, Public Utilities Code. Reference: Sections 25216, 25216.5, Public Resources Code; Section 398.4 , Public Utilities Code.

/1394. Annual Submission to the Energy Commission

(a) Retail Supplier Report

(1) ~~Each retail supplier that makes a claim of specific purchases shall, on March 1 of every year beginning in 1999, provide an attestation, signed by the retail supplier under penalty of perjury, that the kilowatt hours claimed by the retail supplier as specific purchases during the previous calendar year were sold once~~

and only once to retail consumers. The retail supplier shall also on the same date report the information contained in subsection (a)(2) of this section to the Energy Commission.

(2) For each electricity product offered for sale in California for which a retail supplier makes a claim of specific purchases, the retail supplier shall report electronically the following information:

(A) Registered Energy Service Provider Identification Number as assigned by either the Public Utilities Commission or the Energy Commission.

(B) Kilowatt hours purchased, by generating facility and fuel type by the categories specified in subsection (b)(3)(C) of section 1392 of these regulations, during the previous calendar year, including:

1. Generator name and address;

2. The generating facility identification number provided by the Western Systems Coordinating Council, or, in the event that the Western Systems Coordinating Council does not provide an identification number, by the Energy Commission for each generating facility that generated electrical energy that is claimed by the retail supplier as a specific purchase.

(C) Kilowatt hours sold at retail during the previous calendar year.

(D) A sample of each general disclosure provided to consumers pursuant to section 1393 of these regulations during the previous calendar year.

(3) Retail suppliers shall provide to the Energy Commission the information specified in subsections (a)(2)(B) and (C) of this section in a tabular spreadsheet or database format that allows identification of separate fields or cells for the information by product, generating facility, and fuel type. Retail suppliers may provide the information specified in subsection (a)(2)(B) of this section by providing a reference to the date and title of a filing made to the Energy Commission containing the information specified in that subsection.

(b) Audit

(1) Any audit required under this section shall meet the following requirements:

(A) The audit shall be performed by a certified public accountant who is a member of the American Institute of Certified Public Accountants who shall sign any attestation required under subsection (b) of this section;

~~(B) The audit shall be performed with an error band of plus or minus five percent, using auditing standards described in the Statement on Auditing Standards, published by the American Institute of Certified Public Accountants, including statistical sampling techniques if and when appropriate.~~

~~(2) Each retail supplier who makes a claim of specific purchases shall provide an attestation to the Energy Commission that an audit of the information specified in subsections (b)(2)(A)-(D) of this section, demonstrates that the information provided to the Energy Commission pursuant to subsection (a)(2)(B) and (C) of this section and the annual disclosure required by subsection (e)(7) of section 1393 of these regulations contains no material misrepresentations of fact. The attestation shall be provided to the Energy Commission on or before June 1 of each year, except that in 1999, the attestation shall be provided no later than July 31.~~

~~(A) The generating facility identification number provided by the Western Systems Coordinating Council, or, in the event that the Western Systems Coordinating Council does not provide an identification number, by the Energy Commission for each generating facility that generated electrical energy that is claimed by the retail supplier as a specific purchase.~~

~~(B) The fuel type or types, as specified in subsection (b)(3)(C) of section 1392 of these regulations, used by each generating facility identified in subsection (a)(2)(B) of this section.~~

~~(C) Contracts necessary to trace the sale of electrical energy generated by the generating facilities identified in subsection (a)(2)(B) of this section from the generator to the retail supplier.~~

~~(D) The kilowatt hours of electricity purchased by customers from the retail supplier.~~

~~(3) If, in providing the retail supplier report required under subsection (a) of this section, the retail supplier refers to a filing by another party that specifies the total MWhs of a pool of renewable power by fuel type and the amount of electrical energy delivered from that pool to the retail supplier, the referenced filing shall contain an attestation that an audit demonstrates that the information provided in the referenced filing contains no material misrepresentations of fact.~~

~~(c) The Energy Commission may on its own motion, or as a result of a request from a member of the public or other agency, investigate electricity transactions claimed as~~

~~specific purchases to determine whether the transactions are traceable to specific generating facilities and whether they provide commercial verification that the electricity source claimed has been sold once and only once to retail consumers. In conducting its investigation, the Energy Commission may require the production of commercial documents, such as contracts, invoices, the audit performed pursuant to subsection (b) of this section, and attestations.~~

(a) Retail Provider Report.

(1) On or before March 1 of each year, each retail provider who made a claim of specific purchases during the previous calendar year shall provide a filing to the Energy Commission, providing the information identified in subsections (a)(2)(A) — (D) below for each electricity product for which such a claim was made.

(A) Retail providers must provide this information on spreadsheet forms provided by the Energy Commission, and each page must include the Retail Energy Supplier Registration Identification Number provided by the California Public Utilities Commission or, if one is not provided, a unique identification number assigned by the Energy Commission.

(B) The retail provider must provide one paper copy, with an original signature, and, if feasible, must also provide the information electronically.

(C) The report must include an attestation, signed by an authorized agent of the retail provider under penalty of perjury, that the generating facility output claimed by the retail provider as a specific purchase during the previous calendar year was sold once and only once to retail customers of that retail provider, and that the information provided in the report is true and correct.

(D) All fuel type attribute information shall be provided using the fuel type categories identified in subsections (d)(1)(A) and (B) of section 1393.

(E) Retail providers may provide the information specified in subsections (a)(2)(A) — (D) of this section by providing a reference to the date and title of a filing made to the Energy Commission containing the information specified in that subsection.

(2) Informational Requirements.

(A) Purchases

1. For each source of generating facility output being claimed as a specific purchase, the retail provider must include the following information: facility name or pool name, fuel type, facility or pool number (a facility number will be provided by the U.S. Energy Information Agency (EIA), or, if one is not provided, by the Energy Commission, and pool number will be provided by the Energy Commission), certificate number (if any), gross kilowatt hours purchased, kilowatt hours resold or consumed on-site, and the resultant calculation of net specific purchases. The retail provider shall also identify kilowatt hours of generic purchases, kilowatt hours of generic purchases resold or consumed on-site, and the resultant calculation of net generic purchases. This information shall be provided on the current version of Schedule 1 prepared by the Energy Commission.

2. Retail providers who are claiming specific purchases obtained from a pool must reference a filing made no later than March 1 of the current calendar year to the Energy Commission by the pool that includes the following information:

a. For each generator that provided generating facility output into the pool, the facility name, fuel type, facility number provided by U.S. Energy Information Agency (EIA) or, if one is not provided a unique identification number assigned by the Energy Commission, certificate number (if any), and total number of kilowatt hours provided into the pool. This information shall be provided on the current version of Schedule 3 prepared by the Energy Commission.

b. For each purchase of generating facility output from the pool, the amount of kilowatt hours purchased by each purchaser by fuel type. If the purchaser is also a retail provider, include the Retail Energy Supplier Registration Identification number provided by the California Public Utilities Commission or, if one is not provided, a unique identification number assigned by the Energy Commission. This information shall be provided on the current version of Schedule 4 prepared by the Energy Commission.

(B) Retail Sales: The retail provider filing shall include each product name, the kilowatt hours sold for each product from specific purchases, by fuel type, the kilowatt hours sold for each product from sources other than specific purchases, and total retail sales. This information shall be

provided on the current version of Schedule 2A prepared by the Energy Commission.

(C) Comparison of Purchases and Sales: The retail provider filing shall include total net purchases, consistent with subdivision (a)(2)(A) above, minus total retail sales for all products, consistent with subdivision (a)(2)(B) above, and an explanation of any discrepancies between total net purchases and total retail sales. This information shall be provided on the current version of Schedule 2B prepared by the Energy Commission.

(D) Power Content Label: The retail provider shall provide to the Energy Commission a copy of each promotional disclosure provided to customers pursuant to subsection (c)(1) of subsection 1393 that varies from any quarterly disclosure provided in that calendar year. In addition, the retail provider shall also provide a copy of any quarterly label provided to customers pursuant to subsection (c)(2) of section 1393 that was not provided to the Energy Commission at the time it was provided to customers.

(b) Agreed-upon Procedures

(1) By June 1 of each year, any retail provider who made a claim of specific purchases during the previous calendar year shall provide a report prepared by an auditor who has conducted the procedures identified in Appendix C of these regulations. The report shall contain a summary of the results of the procedures and a proof of service of the annual power content label and the quarterly labels for the previous calendar year upon all customers.

(2) A retail provider that is a public agency providing electric services is not required to comply with the provisions of subdivision (b)(1) if that public agency offers only one electricity product to its customers and if the board of directors of the public agency approves at a public meeting the submission to the Energy Commission of an attestation of the veracity of the annual report.

(c) The Energy Commission may on its own motion, or as a result of a request from a member of the public or other agency, investigate electricity transactions claimed as specific purchases to determine whether the transactions are traceable to specific generating facilities and whether they provide commercial verification that the electricity source claimed has been sold once and only once to retail consumers. In conducting its investigation, the Energy Commission may require the production of the service lists used to comply with the requirements of subsection (b) of this section, as well as commercial documents, such as contracts, invoices, the verification procedures performed pursuant to subsection (b) of this section, and attestations.

NOTE: Authority cited: Section 25213, Public Resources Code; Section 398.5, Public Utilities Code. Reference: Sections 25216, 25216.5, Public Resources Code; Section 398.5, Public Utilities Code.

Appendix A

Sample power content label showing a product for which the retail supplier is claiming some specific purchases. In this example, the product is 50% from specific purchases and 50% from generic purchases, and the most recent net system power calculation is for 1997.

POWER CONTENT LABEL		
ENERGY RESOURCES	PRODUCT NAME* (projected)	1997 CA POWER MIX** (for comparison)
Eligible Renewable	55%	11%
-Biomass & waste	-	2%
-Geothermal	-	5%
-Small hydroelectric	-	2%
-Solar	-	<1%
-Wind	-	1%
Coal	10%	21%
Large Hydroelectric	12%	23%
Natural Gas	15%	30%
Nuclear	8%	15%
Other	<1%	<1%
TOTAL	100%	100%
* 50% of Product Name is specifically purchased from individual suppliers.		
**Percentages are estimated annually by the California Energy Commission based on the electricity sold to California consumers during the previous year.		
For specific information about this electricity product, contact Company Name. For general information about the Power Content Label, contact the California Energy Commission at 1-800-555-7794 or www.energy.ca.gov/consumers		

History

1. New Appendix A filed 9-21-98; operative 10-21-98 (Register 98, No. 39).

2. Change without regulatory effect amending appendix A filed 1-14-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 3).

Appendix B

Sample power content label showing a product for which the retail supplier is not claiming specific purchases. In this example, the most recent net system power calculation is for 1997.

POWER CONTENT LABEL		
ENERGY RESOURCES	PRODUCT NAME* (projected)	1997 CA POWER MIX** (for comparison)
Eligible Renewable	11%	11%
-Biomass and waste	2%	2%
-Geothermal	5%	5%
-Small hydroelectric	2%	2%
-Solar	<1%	<1%
-Wind	1%	1%
Coal	31%	31%
Large Hydroelectric	33%	33%
Natural Gas	30%	30%
Nuclear	15%	15%
Other	<1%	<1%
TOTAL	100%	100%
* 0% of Product Name is specifically purchased from individual suppliers.		
**Percentages are estimated annually by the California Energy Commission based on the electricity sold to California consumers during the previous year.		
For specific information about this electricity product, contact Company Name. For general information about the Power Content Label, contact the California Energy Commission at 1-800-555-7794 or www.energy.ca.gov/consumer .		

History
1. New Appendix B filed 9-21-98; operative 10-21-98 (Register 98, No. 39).

2. Change without regulatory effect amending appendix B filed 1-14-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 2).

Appendix C

Sample power content label showing multiple electricity products. In this example, the most recent net system power calculation is for 1997.

POWER CONTENT LABEL			
ENERGY RESOURCES	PRODUCT NAME 1* (projected)	PRODUCT NAME 2* (projected)	1997 CA POWER MIX** (for comparison)
Eligible Renewable	55%	11%	11%
-Biomass & waste	-	2%	2%
-Geothermal	-	5%	5%
-Small hydroelectric	-	2%	2%
-Solar	-	<1%	<1%
-Wind	-	2%	1%
17% Coal	10%	21%	21%
Large Hydroelectric	12%	25%	22%
Natural Gas	15%	30%	30%
Nuclear	8%	15%	15%
Other	<1%	<1%	<1%
TOTAL	100%	100%	100%
<p>* 50% of Product Name 1 and 0% of Product Name 2 is specifically purchased from individual suppliers. **Percentages are estimated annually by the California Energy Commission based on the electricity sold to California consumers during the previous year.</p>			
<p>For specific information about these electricity products, contact Company Name. For general information about the Power Content Label, contact the California Energy Commission at 1-800-555-7794 or www.energy.ca.gov/consumer.</p>			

History:

1. New Appendix C filed 9-21-98, operative 10-21-98 (Register 98, No. 39).

2. Change without regulatory effect amending appendix C filed 1-14-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 3).

Appendix D

Sample annual report to customers for the case where actual sales to consumers do not differ from projected sales by more than five percentage points in any fuel category or subcategory.

POWER CONTENT LABEL Annual report of actual electricity purchases for Product Name in 1997	
ENERGY RESOURCES	ACTUAL POWER MIX
Eligible Renewable	53%
-Biogas and waste	3%
-Geothermal	20%
-Small hydroelectric	3%
-Solar	7%
-Wind	20%
Coal	8%
Large Hydroelectric	12%
Natural Gas	20%
Nuclear	7%
Other	<1%
TOTAL	100%
For each category, the percentage Company Name projected for 1997 was within ± 5 percentage points of the actual percentage.	
For specific information about this electricity product, contact Company Name. For general information about the Power Content Label, contact the California Energy Commission at 1-800-555-7794 or www.energy.ca.gov/consumer .	

Harvey
1. New Appendix D filed 9-21-98; operative 10-21-98 (Register 98, No. 39).

2. Change without regulatory effect amending appendix D filed 1-14-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 3).

Appendix E

Sample annual report to customers for the case where actual sales to consumers differ from projected sales by more than five percentage points in fuel category or subcategory.

POWER CONTENT LABEL Annual report of actual electricity purchases for Product Name in 1997		
ENERGY RESOURCES	ACTUAL POWER MIX	PROJECTED POWER MIX*
Eligible Renewable	49%	55%
-Biomass and waste	3%	-
-Geothermal	15%	13%
-Small hydroelectric	3%	0%
-Solar	7%	-
-Wind	11%	-
Coal	10%	10%
Large Hydroelectric	14%	12%
Natural Gas	19%	14%
Nuclear	8%	8%
Other	<1%	<1%
TOTAL	100%	100%
*(explanation for why projected power mix varied from actual purchases) For specific information about this electricity product, contact Company Name . For general information about the Power Content Label, contact the California Energy Commission at 1-800-555-7794 or www.energy.ca.gov/consumer .		

APPENDIX A

APPENDIX A-1

Sample power content label showing a product for which the retail supplier is claiming some specific purchases. In this example, the product is 50% from specific purchases and 50% from non-specified purchases (for which net system power is claimed), and the most recent net system power calculation is for 1999.

<u>POWER CONTENT LABEL</u>		
<u>ENERGY</u> <u>RESOURCES</u>	<u>PRODUCT</u> <u>NAME *</u> (projected)	<u>1999 CA</u> <u>POWER MIX **</u> (for comparison)
Eligible Renewable	56%	12%
-Biomass & waste	-	2%
-Geothermal	-	5%
-Small hydroelect	-	3%
-Solar	-	<1%
-Wind	-	2%
Coal	10%	20%
Large Hydroelectric	10%	20%
Natural Gas	16%	31%
Nuclear	8%	16%
Other	<1%	<1%
TOTAL	100%	100%
<p>* 50% of Product Name is specifically purchased from individual suppliers.</p> <p>** Percentages are estimated annually by the California Energy Commission based on the electricity sold to California companies during the previous year.</p>		
<p>For specific information about this electricity product, Company Name. For general information about the Power Content Label, contact the California Energy Commission at 1-800-555-XXXX or www.energy.ca.gov/consumer.</p>		

APPENDIX A-2

Sample power content label showing a product for which the retail supplier is not claiming specific purchases. In this example, the most recent net system power calculation is for 1999.

<u>POWER CONTENT LABEL</u>		
<u>ENERGY</u> <u>RESOURCES</u>	<u>PRODUCT</u> <u>NAME*</u> (projected)	<u>1999 CA</u> <u>POWER MIX**</u> (for comparison)
<u>Eligible Renewable</u>	<u>12%</u>	<u>12%</u>
<u>-Biomass and waste</u>	<u>2%</u>	<u>2%</u>
<u>-Geothermal</u>	<u>5%</u>	<u>5%</u>
<u>-Small hydroelect</u>	<u>3%</u>	<u>3%</u>
<u>-Solar</u>	<u><1%</u>	<u><1%</u>
<u>-Wind</u>	<u>2%</u>	<u>2%</u>
<u>Coal</u>	<u>20%</u>	<u>20%</u>
<u>Large Hydroelectric</u>	<u>20%</u>	<u>20%</u>
<u>Natural Gas</u>	<u>31%</u>	<u>31%</u>
<u>Nuclear</u>	<u>16%</u>	<u>16%</u>
<u>Other</u>	<u><1%</u>	<u><1%</u>
<u>TOTAL</u>	<u>100%</u>	<u>100%</u>
* 0% of <u>Product Name</u> is specifically purchased from individual suppliers.		
** Percentages are estimated annually by the California Energy Commission based on the electricity sold to California consumers during the previous year.		

For specific information about this electricity product, contact **Company Name**. For general information about the Power Content Label, contact the California Energy Commission at 1-800-555-www.energy.ca.gov/consumer.

APPENDIX A-3

Sample power content label showing multiple electricity products. In this example, the most recent net system power calculation is for 1999.

<u>POWER CONTENT LABEL</u>			
<u>ENERGY</u> <u>RESOURCES</u>	<u>PRODUCT</u> <u>NAME 1*</u> (projected)	<u>PRODUCT</u> <u>NAME 2*</u> (projected)	<u>1999 CA</u> <u>POWER Mix**</u> (for comparison)
<u>Eligible Renewable</u>	<u>56%</u>	<u>12%</u>	<u>12%</u>
<u>-Biomass & waste</u>	<u>-</u>	<u>2%</u>	<u>2%</u>
<u>-Geothermal</u>	<u>-</u>	<u>5%</u>	<u>5%</u>
<u>-Small hydroelect</u>	<u>-</u>	<u>3%</u>	<u>3%</u>
<u>-Solar</u>	<u>-</u>	<u><1%</u>	<u><1%</u>
<u>-Wind</u>	<u>-</u>	<u>2%</u>	<u>2%</u>
<u>Coal</u>	<u>10%</u>	<u>20%</u>	<u>20%</u>
<u>Large Hydroelectric</u>	<u>10%</u>	<u>20%</u>	<u>20%</u>
<u>Natural Gas</u>	<u>16%</u>	<u>31%</u>	<u>31%</u>
<u>Nuclear</u>	<u>8%</u>	<u>16%</u>	<u>16%</u>
<u>Other</u>	<u><1%</u>	<u><1%</u>	<u><1%</u>
<u>TOTAL</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>
<u>* 50% of Product Name 1 and 0% of Product Name 2 is specifically purchased from individual suppliers.</u>			
<u>** Percentages are estimated annually by the California Energy Commission based on the electricity sold to California consumers during the previous year.</u>			

For specific information about these electricity products, contact the California Energy Commission at 1-800-555-7794 or www.energy.ca.gov/consumer.

APPENDIX A-4

Sample annual report to customers for the case where actual purchases do not differ by more than five percentage points in any fuel category or subcategory.

POWER CONTENT LABEL

Annual report of actual electricity
purchases for **Product Name** in 1999

<u>ACTUAL</u>	
<u>ENERGY RESOURCES</u>	<u>POWER MIX</u>
<u>Eligible Renewable</u>	<u>53%</u>
<u>-Biomass and waste</u>	<u>3%</u>
<u>-Geothermal</u>	<u>20%</u>
<u>-Small hydroelectric</u>	<u>3%</u>
<u>-Solar</u>	<u>7%</u>
<u>-Wind</u>	<u>20%</u>
<u>Coal</u>	<u>8%</u>
<u>Large Hydroelectric</u>	<u>12%</u>
<u>Natural Gas</u>	<u>20%</u>
<u>Nuclear</u>	<u>7%</u>
<u>Other</u>	<u>0%</u>
<u>TOTAL</u>	<u>100%</u>

For each category, the percentage **Company Name**
projected for 1999 was within ± 5
percentage points of the actual percentage.

For specific information about this electricity
product, contact **Company Name**. For general
information about the Power Content Label,
contact the California Energy Commission at 1-8
555-7794 or www.energy.ca.gov/consumer.

APPENDIX A-5

Sample annual report to customers for the case where actual purchases differ from projected fuel mix by more than five percentage points in one or more fuel categories or subcategories.

POWER CONTENT LABEL		
Annual report of actual electricity purchase for Product Name in 1999		
<u>ENERGY RESOURCES</u>	<u>ACTUAL POWER MIX</u>	<u>PROJECTED POWER MIX*</u>
Eligible Renewable	49%	56%
-Biomass and waste	3%	-
-Geothermal	15%	-
-Small hydroelect	3%	-
-Solar	7%	-
-Wind	11%	-
Coal	10%	8%
Large Hydroelectric	14%	12%
Natural Gas	19%	17%
Nuclear	8%	7%
Other	0%	0%
TOTAL	100%	100%
* [explanationforwhy projectedpower mix variedfrom actual purchases]		

Appendix B
Energy Commission Certificate Program

(a) This subsection describes the Energy Commission certificate program, in which a retail provider may use certificates created by Energy Commission software to demonstrate that it has purchased the right to claim a specified quantity of generating facility output from a specific facility.

(b) The Energy Commission certificate program shall consist of the following elements:

(1) The Energy Commission will make its certificates software available to generators within the Western Systems Coordinating Council that do not sell their generating facility output to an investor-owned utility under the terms of a contract entered into prior to September 24, 1996 under the Public Utilities Regulatory Policies Act of 1978. This software creates facility-specific certificates that contain the following information: the serial number of each certificate issued, the kilowatt hours associated with each certificate, the name of the generator, the generating facility identification number provided by the U.S. Energy Information Agency or, if one is not provided, a unique identification number assigned by the Energy Commission, the quarter in which the electrical energy identified on the certificate was generated, the fuel type used to generate the kilowatt hours, and a signature block for the generator.

(2) Each generator that wishes to obtain a copy of the certificates software shall provide to the Energy Commission the following information: the generating facility name, the generating facility identification number provided by the U.S. Energy Information Agency or, if one is not provided, a unique identification number assigned by the Energy Commission, the address of the generating facility, the name and telephone number of a designated contact for the generator, and the fuel or technology type and capacity of the generating facility. After receiving this information, the Energy Commission will provide the generator with a copy of its certificates software and a series of certificate numbers to be used for each generating facility identified by the generator.

(3) Each retail provider that owns a certificate created by the Energy Commission's certificates software may use that certificate to support a claim of specific purchases in its annual retail provider report pursuant to the terms of this program. The retail provider shall include the serial number(s) of the certificates for generation being claimed.

(4) In the annual report prepared pursuant to Public Utilities Code/398.5(e), the Energy Commission will find that certificates created by the Energy Commission's certificates software verify that the retail provider who provided the certificates has purchased the right to claim the generating facility output from the specific facility identified on the certificates, provided the generator has done all of the following:

(A) Ensure that the total amount of generation in each quarter is equal to or greater than the amount of kilowatt hours identified in the certificates issued in that quarter.

(B) Provide the following information to the Energy Commission no less frequently than the fifteenth day after the end of each quarter: total generation during the previous quarter of each facility, the serial numbers of all certificates created by the generator during the previous quarter for each facility, and the amount of kilowatt hours identified in each such certificate.

(C) Provide, upon Energy Commission request, independent third-party readings of the facility meter. Generators must keep copies of meter reads for two years after the generation occurs.

Appendix C

Agreed-Upon Procedures

(a) This Appendix describes the agreed-upon procedures that retail providers claiming specific purchases shall use to comply with the requirements of subsection (b)(1) of section 1394 of these regulations. These procedures shall be performed for each electricity product for which a claim of specific purchases was made during the previous calendar year, unless the exemption identified in subsection (b)(2) of section 1394 is applicable. The procedures in subsections (c)(1), and (c)(2) of this Appendix are applicable to all transactions relating to the fuel mix of the product, and the procedures in subsection (c)(3) are applicable to the power content labels disclosing the fuel mix of the product. The procedures described in subsection (c)(4) are also applicable to transactions in which the purchase of generating facility output is traced from a specific generating facility to a retail customer through a pool.

(b) The retail provider must engage an independent accountant or certified internal auditor to perform the procedures identified in subsection (3) below in accordance with the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Attestation Engagements, Section 600 or under Statements on Auditing Standards, Section 622. The accountant shall provide a report to the Energy Commission no later than June 1 of each year summarizing the results of the procedures.

(1) The accountant must be a Certified Public Accountant in good standing with the American Institute of Certified Public Accountants or a Certified Internal Auditor in good standing with the Institute of Certified Internal Auditors.

(2) The accountant or auditor may use sampling techniques following the guidance set forth in the AICPA AU Section 350, *Audit Sampling*, provided that the sample size is determined using a confidence level of 90 percent, a tolerable deviation of 10 percent, and an expected deviation rate of 3 percent, and the total population size is determined. The program participant will need to determine the population size (estimates are acceptable). The sample size shall be determined by using a statistical sampling program, and sample selection shall be made on a random basis using a random number generator. In any event, no more than 50 percent (50%) of the selected transactions may relate to any one month unless more than 50 percent (50%) of the population relates to the same month. All parameters and deviations used and the sample size must be described in the report. If the accountant chooses not to use sampling techniques, testing of 100 percent (100%) of the population must be performed.

(c) Agreed-Upon Procedures

(1) Purchases: The auditor shall review the information used to prepare Schedules 1 and 2B, and perform the procedures identified below, noting any exceptions.

(A) The auditor shall agree the specific purchases and resales/self-consumption by facility or pool name, unique identification number, certificate numbers, if

any, and kilowatt hours and fuel type from the information used to prepare Schedule 1 to Schedule 1. The auditor shall agree the generic purchases and resales/self-consumption from the information used to prepare Schedule 1 to Schedule 1. The auditor shall also test the mathematical accuracy of Schedule 1.

(B) The auditor shall select a sample of purchases from the information used to prepare Schedule 1 using the sampling guidelines discussed in subsection (b)(2) of this Appendix, and for each purchase in the sample perform the following procedures:

(i) Agree the facility or pool name, unique identification number, certificate number, if any, kilowatt hours and the fuel type from the invoice (or from the Energy Commission) to the information used to prepare Schedule 1.

(ii) For facilities owned by the retail provider, agree the kilowatt hours with meter readings made by an independent third party, or confirm that the retail provider has another internal auditing procedure that assures facility production agrees to production claims.

(iii) Agree the date of generation from the invoice to the reporting period of the information used to prepare Schedule 1.

(C) The auditor shall agree the net kilowatt hours purchased shown on Schedule 1 to net purchases shown on Schedule 2B. Note as an exception if any explanation of the difference in net purchases and sales was improperly excluded.

(2) Sales: The auditor shall review the information used to prepare Schedule 2A, and perform the procedures identified below, noting any exceptions.

(A) Agree sales by fuel type and by product from the information used to prepare Schedule 2A to Schedule 2A. The auditor shall also check the mathematical accuracy of Schedule 2A.

(B) Select a sample of sales from the information used to prepare Schedule 2A, using the sampling guidelines discussed in subsection (b)(2), and agree the sales to customers by fuel type and product to the billing statement.

(3) Labels

(A) The auditor shall obtain copies of all quarterly and promotional labels for the previous year, and compare the percentages by fuel type in these disclosures

to the percentages by fuel type calculated per subsection (d)(1)(C)(1) of section 1393 using the data supplied in Schedule 2A, noting any exceptions.

(B) The auditor shall obtain a copy of the annual power content label provided to customers for each product pursuant to subsection (e)(7) of section 1393. The auditor shall calculate the fuel and technology mix of the total annual retail sales for the product using the information provided in Schedule 2A and the equation found in subsection (d)(1)(C) of section 1393. The auditor shall then compare these percentages to those identified for the actual power mix on the annual label. The auditor shall note any exceptions greater than 1%.

(C) The auditor shall determine if the absolute value of the percentage point difference for any fuel type identified on the annual label and any projected disclosure is greater than five percentage points, and, if so, whether the annual label displays a "Projected Power Mix" column that identifies the projected disclosure that varies the most from the actual fuel mix and a footnote explaining the reason for the discrepancy between the projected and actual fuel mix. The projected disclosure that varies the most from the actual fuel mix is determined pursuant to subsections (d)(2)(A) and (B) of section 1393.

(4) Pools

(A) Purchases: The auditor shall obtain the information used to prepare Schedule 3, and perform the procedures identified below, noting any exceptions.

(i) The auditor shall agree the purchases by facility name, unique identification number, certificate number, if any, and kilowatt hours and fuel type from the information used to prepare Schedule 3 to Schedule 3. The auditor shall also test the mathematical accuracy of Schedule 3.

(ii) The auditor shall select a sample of purchases from the information used to prepare Schedule 3 using the sampling guidelines discussed in subsection (b)(2), and for each purchase perform the following procedures:

a. Agree the facility name, unique identification number, certificate number, if any, and kilowatt hours and fuel type from the invoice to the information used to prepare Schedule 3.

b. For facilities owned by the retail provider, agree the kilowatt hours with meter readings made by an independent third party, or confirm that the retail provider has another internal auditing procedure that assures facility production agrees to production claims.

c. Agree the date of generation from the invoice to the reporting period of the information used to prepare Schedule 3.

(B) Sales: The auditor shall obtain the information used to prepare Schedule 4, and perform the procedures identified below, noting any exceptions.

(i) The auditor shall agree the sales by purchaser and by fuel type and kilowatt hours from the information used to prepare Schedule 4 to Schedule 4. The auditor shall also test the mathematical accuracy of Schedule 4 .

(ii) The auditor shall select a sample of sales from the information used to prepare Schedule 4 using the sampling guidelines discussed in subsection (b)(2), and for each sales compare kilowatt hours of fuel type to a copy of the billing statement and any other records.

INITIAL STATEMENT OF REASONS
FOR ADOPTION OF REGULATIONS GOVERNING
ELECTRICITY GENERATION SOURCE DISCLOSURE

California Energy Commission
Docket No. 00-SB-1305

INITIAL STATEMENT OF REASONS

I. INTRODUCTION

The California Energy Commission (Commission) was created by the Warren-Alquist State Energy Resources Conservation and Development Act (Public Resources Code section 25500 et seq.). The Act vests the Commission with a wide range of duties and responsibilities related to the development and conservation of energy resources in California. As the agency responsible for establishing the state's energy policy, the Commission collects, stores, analyzes, and disseminates a broad range of information.

SB 1305, which was enacted in 1997, imposes a series of requirements on the Commission and on participants in the California electricity market. The legislation responded to the decisions of the California Legislature, the California Public Utilities Commission (CPUC) and the Federal Energy Regulatory Commission to initiate a significant amount of deregulation in California's electric industry. In order to ensure consumer access to information about post-deregulation electricity options, SB 1305 established disclosure and reporting requirements for both electricity generators and electricity providers. The Commission was directed to specify guidelines and formats for these requirements, to prepare two annual reports and conduct other activities to assist in implementing the goals of SB 1305.

II. DESCRIPTION OF PUBLIC PROBLEM

Electricity market restructuring is designed to provide consumers with more options in selecting the electricity they purchase and from whom they purchase it. At the same time, however, deregulation raises concerns about consumer protection issues. SB 1305 established a program directed at ensuring that consumers in the new electricity market receive accurate information about the electricity products they can purchase, and are protected from fraudulent or misleading promotional efforts, particularly with respect to green or environmentally friendly marketing claims.

Under SB 1305, retail providers must provide information to consumers about the generation sources of the electricity they consume, in a format selected by the Commission. They can disclose the projected actual fuel mix of their product (and *must* do so if they make any advertising claims about the fuel mix or the environmental attributes of their product), or they can disclose a default fuel mix, referred to as "net system power". Net system power is determined annually by the Commission and represents an estimate of the overall fuel mix of electricity consumed in California. Retail providers who make claims and must therefore disclose their projected actual mix must also provide an annual report to the Commission that specifies the amount of sales of the product, and identifies the actual sources used to provide their product(s) during the previous calendar year. The Commission compares this information to actual generation

data we receive from system operators and to the retail provider disclosures, and presents the results of this comparison in an annual report to the CPUC, which is responsible for registering retail providers.

The Commission adopted regulations implementing SB 1305 in 1998. On March 15, 2000, the Commission adopted an Order Instituting Rulemaking (OIR) to amend these existing regulations. The OIR delegated to the Renewables Committee or a successor committee with comparable powers the authority to preside over the rulemaking. On May 23, 2000, the Renewables Committee was disbanded and its responsibilities were delegated to the Electricity and Natural Gas Committee. The Electricity and Natural Gas Committee is presiding over this rulemaking proceeding.

The broad objectives of the proposed modifications are to: 1) make minor clarifications to the disclosure guidelines specified in sections 398.3, 398.4, and 398.5 of the Public Utilities Code and found in sections 1391 —1394 of Title 20, California Code of Regulations; 2) institute a tradable certificates program for use by retail providers in supporting claims of specific purchases; and 3) modify the requirements for the annual retail provider report and to replace the current audit requirement for the annual retail provider report with a modified independent third-party verification requirement.

The Commission proposes to meet the first objective by clarifying several definitions, adding three new definitions, modifying the identification numbers used by generators, and clarifying the mailing requirements for quarterly and annual disclosures. To meet the second objective, the Commission developed a tradable certificates program that can be used by generators, wholesalers and retail providers. Although the statute refers to the use of a tradable commodity system by retailers to verify claims of specific purchases, the current regulations implementing SB 1305 require retail providers to support their claims by tracing contracts for the purchase of electrical energy.¹ Notwithstanding the statutory language, the current regulations require retail providers to support such claims by tracing contracts for purchases of electrical energy back to specific generating facilities. Two reasons supported the Commission's earlier decision to defer introduction of a tradable commodity system. First, the Commission believed that development of such a system would take more time than was allocated to completing the first round of regulations.² Market participants were eager to see the Commission adopt regulations specifying the format of the mandated disclosures, and taking time to develop a tradable commodity system seemed imprudent. In addition, several participants, including a consumer research group familiar with consumer response to deregulation expressed

¹ Under a tradable commodity system, generating facility output is separated into two components: the kWh of electrical energy produced, and the kWh of the fuel type attribute produced, each of which can be bought and sold separately from the other.

² SB 1305, which was enacted in October, 1997, directed the Commission to develop its regulations by January 1, 1998. The NOPA was published on January 2, 1998, and final adoption of the regulations by the Commission occurred in June, 1998.

concern that implementing a program in which fuel characteristics and electrical energy could be sold entirely separately so early in the deregulation process would lead to consumer confusion.

The Commission believes that several years of experience under deregulation has resulted in increased consumer understanding of the electricity market. This fact, combined with the safeguards against fraud that are built into the Commission's tradable certificate program lead us to believe that the introduction of tradable certificates is now appropriate. Introduction of a tradable certificates program will allow generators and/or wholesalers to separate the electricity energy portion of a generating facility's output from the fuel type attribute of the generation. Thus, generators could sell the electrical energy produced by a facility to one entity and the corresponding amount of fuel type attribute to another. In turn, retail providers would not need to demonstrate that they had obtained the electrical energy from any particular source, but only that they had obtained the correct amount of fuel type attribute from the types of sources claimed in their disclosures. Tradable certificates provide a simple mechanism to demonstrate that the dollars expended by consumers for an electricity product can be traced back to a specific amount of kilowatt hours from a specific generating facility of the specific fuel type claimed for that product.

The third objective of the rulemaking is to consider changes to the annual retail provider report process. The most significant changes affect the independent third-party verification requirements applicable to the sales and purchase information provided to the Commission by retail providers. Currently, the Commission's regulations require retail providers to provide the results of an independent third-party audit of the annual retail provider report filed with the Commission on March 1 of each year. However, the audit requirement has proved to be difficult to comply with, primarily because of lack of clarity and expense associated with conducting a complete audit of nonfinancial information, and because of the unfamiliarity of most auditors with electricity transactions. As a result, the Commission hired the accounting and consulting firm of Pricewaterhouse Coopers to develop a simplified verification process. The proposed modifications reflect the "agreed-upon procedures" developed during this process. In response to concerns expressed by public agencies about the appropriateness of any verification process imposed on public agencies, the Commission has added an exemption from the agreed-upon procedures for such agencies that sell only one product to their customers.

In addition, the informational requirements for the annual retail provider reports have been amended to provide additional clarification, and to specify the requirements applicable to purchases and sales from electricity pools. The use of spreadsheet forms developed by the Commission to provide this information will be required, but the current requirement that filings be electronic will be modified to allow paper filing where electronic filing is infeasible.

III. DOCUMENTS AND STUDIES RELIED UPON

The proposed amendments are the result of public comment and staff experience with the SB 1305 program during the past two years. Staff has made a significant effort to become familiar with the effectiveness of various attempts to provide consumers with useful information in labels and other means of disclosure. Staff also hired Pricewaterhouse Coopers to assist in understanding the various options for amending the independent third-party verification requirements. The Commission relies on the compilation of public comments and other documents that have been presented in this proceeding and docketed in Docket No. 00-SB-1305. These documents are listed below:

Protocol for the Power Source Disclosure and Customer Credit Programs, CEC Publication P500-00-005, docketed March 17, 2000

Report: California Energy Commission Energy Label Consumer Exploratory, prepared by Orinda Consulting Group, March 1998

Information Disclosure for Electricity Sales, Consumer Preferences from Focus Groups, National Council on Competition and the Electric Industry, July, 1997

Federal Food Labeling Guidelines, 21 C.F.R./ 101.1 et seq.

Schedules Referenced in Appendix C for Filing the Annual Retail Provider Report

Transcripts from Commission Workshops held November 2, 1999 and January 19, 2000

Summary from Commission Workshop held July 13, 2000

IV. ALTERNATIVES THAT WOULD LESSEN IMPACTS ON BUSINESS, INCLUDING SMALL BUSINESS; MANDATED TECHNOLOGIES

As stated above, the two purposes of the rulemaking (apart from making minor modifications and clarifications) are to initiate a tradable certificates program and to reduce the verification requirements associated with supporting claims of specific purchases. Both of these changes should reduce the costs currently associated with the SB 1305 program. In addition, the Committee to whom this rulemaking has been delegated has solicited the comments of staff and affected entities with the specific goal of considering all means to minimize the impacts of compliance with SB 1305 requirements. In doing so, it has considered several alternatives to the proposed regulations. These include allowing e-mail delivery and posting of the required disclosures rather than delivery by U.S. mail, alternative verification procedures, and allowing an alternative tradable certificates

program. These alternatives are discussed below in the specific sections addressing each actual proposed amendment.

The Commission expects to consider additional alternatives during the rulemaking proceeding. Other than the alternatives already incorporated into the proposal, the Commission is not aware of alternative proposals that would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation. The proposed regulations do include a prescribed procedure—the agreed-upon procedures identified in Appendix C that the Commission is proposing to substitute for the current audit requirement. As a result, the Commission considered the use of a performance standards as an alternative. This consideration is discussed below in the section addressing Appendix C.

V. EFFORTS TO AVOID UNNECESSARY DUPLICATION WITH FEDERAL REGULATIONS

There is no comparable federal law, as states have the sole authority to regulate the terms and conditions of retail electricity services. The Electricity and Natural Gas Committee did review federally adopted food labeling and disclosure requirements (e.g., nutrition labels) for guidance in drafting the format of these disclosure and reporting requirements.

VI. DISCUSSION OF SPECIFIC REQUIREMENTS

The following is a list of each of the Commission's regulations implementing SB 1305, along with a summary of and the rationale for the proposal:

/ **1391. Definitions**

This section provides definitions necessary to understand the terms used in those sections of the article that specify the format to be used for disclosure and reporting. There are several proposed modifications to the definitions found in this section and three additions.

(a) Claim that identifies any of a retail supplier's electricity sources as different from net system power: This definition is proposed to be amended in two ways in the regulation. First, the phrase "retail supplier" is replaced by the phrase "retail provider". (This change is reflected in the change in the definition of "retail supplier", and is made in every other section that currently contains the phrase "retail supplier". The rationale for this change is discussed below.)

Second, the phrase "or of its use" is deleted from subsection (a)(3), and the phrase "related to the generator" is added to the same subsection. The reason for this change is that the current language has resulted in mandatory disclosure of the specific mix of any product for

which claims are made—even those claims that are unrelated to the fuel type attribute of the product. For example, under the existing definition, a retail provider who claims that he or she will create an environmental benefit by planting trees in South America with the profits from the sale of the product is required to disclose the actual fuel mix of the product. In addition, the retail provider must file an annual report and subject the report to independent third-party verification. However, the claim has nothing to do with the fuel type attribute of the product. Therefore, it doesn't make any sense require that the retail provider confirm a particular fuel mix of his or her product.

Due to the fact that the disclosure requirements encompassed by the program are limited to fuel characteristics, the Commission is proposing to exclude claims unrelated to fuel type attribute. We believe the amended definition includes claims that are based upon the fuel or technology used by the product, even if there is no direct reference to that characteristic. For example, claims that a product is clean, or produces a lower level of greenhouse gases, are directly related to the generation source and hence are included in this definition. With respect to other types of environmental claims, we note that the Commission retains the ability to "verify the veracity of environmental claims made by retail [providers]." (Pub. Utilities Code/ 398.5(h))

Fuel type attribute: This is a new definition added because of the proposal in the regulations to implement a tradable commodity system under which the out put of a generating facility can be separated into two components: the fuel type attribute and the electrical energy. This term defines that the fuel type attribute is the fuel or technology type used to generate a quantity of electrical energy.

Generating facility output: This new term is added for the same reason as stated for the previous definition. The generating facility output is the entire attribute produced by a generating facility, including both the electrical energy and the fuel type attribute. Under the proposed amendments the two can be sold separately from each other.

Pool: This is a new definition, added because of the increased use of pools of renewable power to market renewable electricity products at the wholesale level. This term is used in section 1394 of the regulations and in Appendix C. The definition states that a pool has both multiple sellers and buyers who may be unknown to each other. The definition also states that a pool must sell as much electrical energy as it buys, and must purchase at least as much fuel type attribute as it sells. This latter requirement reflects the fact that a pool can trade in electrical energy and fuel type attribute separately, but that the electrical energy cannot be stored (hence the amount going in to the pool must equal the amount going out), whereas a pool owner can retain kWh of fuel type characteristics for future use. The definition provided thus reflects the actual structure of renewable pools.

Retail supplier: The definition of retail supplier is amended to state that the definition also applies to the phrase "retail provider". This amendment was made because staff has found

that market participants more easily recognize the latter phrase, perhaps because it is also used in the Commission's Renewable Technology Program, which is similar to the SB 1305 program, and has many of the same participants. In this rulemaking, the Commission is proposing to substitute the term "retail provider" for "retail supplier" through out the regulations.

Specific purchases: The definition of specific purchases is amended to reflect the fact that the Commission is proposing to allow the use of tradable certificates to support claims of specific purchases. By eliminating the phrase "the sale of electrical energy", the Commission is making it clear that it will not require retail providers to trace a contract path for the purchase of electrical energy in order to support a claim of specific purchases. Rather, retail providers are allowed to demonstrate that they have obtained the right to claim a specific purchase by showing other commercial verification that the generating facilities identified has produced generating facility output that has been sold at retail only once. The statutory definition of specific purchases includes reference to the use of a tradable commodity system to support claims of specific purchases; thus, the amended definition is closer to the statutory definition than the current definition.

/ 1392. Generation Disclosure

This section contains the requirements for reporting generation and fuel information. This information is used by the Commission to complete an annual report comparing information supplied by retail providers to consumers about the generation sources of electricity they offer for sale and information provided to the Commission about their actual sales and purchases of electricity and an annual report specifying net system power.

In addition to changing the phrase "retail supplier" to "retail provider", the Commission is proposing to make only one set of changes to this regulation. At the time that the original regulations were adopted, the Commission believed that the Western Systems Coordinating Council (WSCC) would be providing generators with unique identification numbers. The Commission needs to use a unique identification number for each generator in order to maintain its SB 1305 generation database. This database is used in completing the annual comparison report we provide to the CPUC that is discussed above. However, there are, in fact, no WSCC numbers, where as the U.S. Energy Information Agency does assign unique identification numbers to generating facilities. The Commission also accesses U.S. Energy Information Agency public databases in fulfilling its other data collection and analysis responsibilities, and therefore already uses these numbers. As a result, the Commission is amending subsections (b)(1)(C) and (d)(2)(A)3. to delete the reference to WSCC unique identification numbers and substitute a reference to U.S. Energy Information Agency unique identification numbers.

/1393. Retail Disclosure to Consumers

As in the other sections, the Commission is proposing to substitute the phrase "retail supplier" for the current phrase "retail provider". In addition, the Commission is proposing three other changes to this regulation. Subsections (c)(2) and (3) direct retail providers to "provide" quarterly and annual disclosures "in writing" to customers. Retail providers have asked the Commission to clarify whether posting of notices in a public place, newspaper publication, or providing the disclosures via the Internet are sufficient. The Commission has preliminarily determined that posting in a public place and newspaper publication are unlikely to result in consumers being aware of the disclosures, and are therefore insufficient. The Commission carefully considered these alternatives, but believes that many consumers would not look at those sources for information about the electricity product they consume, as that is not the type of subject typically found in notices posted in those locations. Moreover, posted and published notices are more appropriate for situations in which the provider of the notice does not know which individuals will be interested in the notice. In contrast, in this case, the interested public are clearly the customers of the retail provider, to whom the retail provider is already providing a bill each month or quarter. Therefore, the Commission has determined that posted or published notices are unlikely to result in consumer access to "reliable, accurate, and timely information" regarding the fuels sources used to create an electricity product. (Pub. Utilities Code,/398.2)

However, the Commission does agree that retail providers should be allowed to provide disclosures via the Internet to those consumers who have indicated they have no objection to receiving them in that fashion. Internet disclosure can be less expensive for retail suppliers, and more convenient for both retail suppliers and consumers. Therefore, the Commission proposes to amend the regulations to clarify that disclosures must be made by U.S. mail, but that providing disclosures by Internet is acceptable when consumers have indicated their consent.

The third change would require retail providers to mail a copy of their quarterly disclosures to the Commission when they provide them to their customers. The Commission sometimes receives inquiries about these labels (the Commission's telephone number is on the label), and staff finds it difficult to answer questions without a copy in front of them. This provision will resolve that problem.

The fourth change to this section is found in subsections (e)(6)(D) and (e)(7)(D). Here, the Commission moved the power content labels that are currently placed in five separate appendices into once appendix. The labels themselves are unchanged, the amendment is being considered solely to accommodate several new appendices that the Commission is proposing to add to implement a revised verification procedures and a tradable certificates program. These changes are discussed below.

Finally, the proposed amendments contain a correction to the current published version of the regulations. In subsection (e)(7)(C)1.a., the reference to subsection (e)(6)(C)1.c. is changed to subsection (e)(7)(C)1.c.

/ 1394. Annual Disclosure to the Energy Commission

This section specifies the informational requirements for the Annual Retail Provider Report that retail providers make to the Commission and that the Commission uses to complete the comparison report mandated under Public Utilities Code section 398.5(e) and the determination of Net System Power, pursuant to Public Utilities Code section 398.5(f). The Commission is proposing to delete the existing section in its entirety and substitute a new section. However, there are only minor changes to the actual informational requirements themselves; the proposed deletion and substitution is being considered because of extensive changes to the organizational structure of the regulation.

Section 1394(a) establishes the general requirements for the retail provider report. The first requirement, found in subsection (a)(1)(A), is that the information submitted be provided on spreadsheet forms provided by the Commission. The Commission has assembled these spreadsheet forms into a Microsoft Excel[®] file that can be downloaded from the Commission's web page. It contains the mandatory forms (identified by number in each of the following subsections: (a)(2)(A), (a)(2)(A)2.a., (a)(2)(A)2.b. (a)(2)(B), and (a)(2)(C)), as well as an attestation form a retail provider can use to meet the requirements of (a)(1)(C), and a "label calculator" (discussed below).³ The Commission will also provide paper copies of the forms to retail providers who do not have the ability to file the information electronically. Although existing subsection (a)(3) already imposes the requirement that this information be provided in a tabular spreadsheet or database format, we have not previously specified the exact format that must be used. During the two years that we have received this information, it has become evident that it is much easier for staff to input the data if a common spreadsheet format is used. This, in turn, reduces the cost and time it takes for use to complete our annual comparison report to the CPUC, and our determination of Net System Power. We also propose to require that the Retail Energy Supplier Registration Identification Number assigned by the CPUC or a unique identification number assigned by the Energy Commission be included on each page. This assists us should the pages of a report become separated.

In addition, subsection (a)(1)(B) specifies that one paper copy must be submitted, and that if feasible, an electronic copy must be submitted. We keep the paper copy in order to have complete records for the program. The current regulations (in existing subsection (a)(2) require electronic filing; however, although electronic submission dramatically reduces the amount of time needed by Commission staff to input the data provided, some small retail providers do not have the capability of completing an electronic filing. Therefore, the

³ A copy of each form produced by the file is attached to the Initial Statement of Reasons.

Commission proposes to delete this requirement for retail providers for whom such a filing is infeasible.

Subsection (a)(1)(C) requires an attestation similar to the one that is currently required in existing subsection (a)(1). However, there is a slight difference in that the proposed language only requires the retail provider to make an attestation about sales to his or her customers. The Commission realized that the existing requirement compelled retail providers to make an attestation about potential sales that they might have no knowledge of. As that seemed both meaningless and unfair, the Commission proposes to delete that requirement. In addition, the Commission proposes to add a requirement that the attestation include a statement that the information submitted to the Commission is true and correct. This is designed to ensure that the Commission receives accurate information, which is necessary in completing a reliable comparison report, and an accurate estimate of Net System Power. The Microsoft Excel[®] file available on the Commission's web site that contains the mandated Schedules also includes an optional attestation form.

Finally, subsection (a)(1)(D) merely references the fuel type attribute categories used in the statute and throughout the rest of the regulations. This requirement is designed to ensure that fuel types are identified in a manner consistent with the regulations and the statute.

Subsection (a)(2) contains the actual informational requirements for the annual retail provider report. Subsection (a)(2)(A) provides the requirements for purchases of generating facility output. In addition to the current requirement that the facility name, fuel type, and kilowatt hours purchased be identified for specific purchases, the proposed regulation requires that the report include the pool name (if applicable) and unique identification number. Both pools and individual facilities have such numbers, with the facility number typically being provided by the U.S. Energy Information Agency, which maintains a database of generating facilities throughout the United States. In the event that the U.S. Energy Information Agency has not assigned an identified facility a number, the Commission will provide one, as it will for any pool. The use of unique identification numbers is valuable in maintaining our database of these pools and facilities. The regulation also requires the identification of any certificates used to support a claim of specific purchases, to reflect the fact that we are proposing to implement a tradable certificates program in which retail providers certificates demonstrate the right to claim a specific amount of generating facility output.

In addition, the regulation requires retail providers to identify the amount of kilowatt hours from specific purchases that are resold or consumed on site, and the amount of generic purchases, and the amount of generic purchases sold or consumed on site. These numbers are required in order to calculate the net purchases that are used to provide the product to consumers, and to trace electrical energy or fuel type attribute from a specific generating facility to a retail consumer. Obviously, power that is resold by a retail provider or consumed onsite cannot support a claim of specific purchases to retail customers.

In addition, subsection (a)(2)(A)2. specifies that if a retail provider wishes to claim electrical energy or fuel type attribute from a pool purchase, the pool must have provided a filing to the Commission by March 1 of the same year in which the annual retail provider report is filed. The filing must contain an identification of the facility name, fuel type, unique identification number, and kilowatt-hours provided into the pool by each facility, certificate number (if applicable). This information is needed for the same reasons discussed above for the information required by subsection (a)(2)(A)1., and must be provided using Schedule 3.

The filing must also must contain information about purchases from the pool, including the amount of kilowatt hours of generating facility output (which includes both electrical energy and fuel type attribute) purchased from the pool. This information is necessary to determine whether the pool meets the definition provided in Section 1391(o). Finally, if the purchaser is a retail provider, the report must include the unique identification number assigned to that retail provider. (The California Public Utilities Commission assigns numbers to registered energy service providers; other retail providers, including municipal utilities investor-owned utilities, and irrigation districts will be provided numbers by the Commission.) This information assists us in tracking the flow of generating facility output from the pool by kilowatt hours of energy and by fuel type attribute. Without this information, we cannot determine whether in fact the purchases claimed by a retail provider can be supported by a purchase from that pool. The information must be provided on Schedule 4.

Section 1394(a)(2)(B) specifies the information required about retail sales of the product. In addition to the information that is currently required in subsection (a)(2)(C), the amendments clarify that sales must be separated by electricity product. This is because we need to be able to compare the claims made for each product with the sales and purchases information for each product. In addition, we are directing retail providers to distinguish between specific purchases and other purchases in identifying their sales to customers. This information is necessary for us to be able to confirm the accuracy of the claims made on the power content label.

Section 1394(a)(2)(C) requires that the annual report include a calculation of net purchases, minus sales, consistent with the information provided about purchases and sales. This information, presented on a spreadsheet form, is helpful in preparing our report because it highlights any inconsistencies between the purchases and sales information and the claims made to customers on the labels. In addition, the Commission requires an explanation of any discrepancies between purchases and sales. This information is necessary because we need to evaluate any such discrepancies in our annual report to the CPUC. An optional "label calculator" is included in the Microsoft Excel[®] file made available on our web site; it calculates the actual fuel mix percentages for each product using the information provided on Schedule 2.

Section 1394(a)(2)(D) requires the annual retail provider report to include the quarterly disclosures and promotional disclosures made to customers. This is a requirement that is currently found in existing subsection (a)(2)(D). It also requires that the retail provider include any quarterly labels that were not mailed to the Commission as required by subsection (c)(2) of section 1393.

Subsection (b) of section 1394 amends the current requirement (found in existing section (b)(2)) that the retail provider provide an audit of the annual retail provider report and various additional purchase and sales information. The audit requirement was extensively discussed in the earlier rulemaking adopting the SB 1305 regulations. At that time, the Commission, with the support of retail providers, determined that an audit was necessary to ensure the accuracy of the annual report. However, retail providers did not want the Commission to conduct the audit because of concerns about government access to confidential business information. Unfortunately, the audit requirement has proven difficult for retail providers to comply with. Many auditors are unfamiliar with tracing electricity transactions, and, as a result, retail providers found audits either extremely expensive, or very difficult to obtain. As a result, the Commission hired the accounting and consulting firm of Pricewaterhouse Coopers to develop a simplified verification process. This subsection required retail providers to provide a report prepared by an auditor who has conducted these procedures. The Commission proposes to include these procedures in a new appendix (Appendix C) to these regulations. A detailed discussion of the agreed-upon procedures is found in the section of this ISOR addressing Appendix C. In addition, this section requires that the report be accompanied by a copy of the annual label for the previous year and a proof of service of the quarterly and annual labels for the previous year. These copies are necessary for us to conduct a comparison of the annual retail provider report with the labels. The proof of service is required because we currently have no idea whether customers receive the required labels or not. This requirement will let us know that retail consumers are receiving the mandated disclosures.

Subsection (b) also contains an exemption from the agreed-upon procedures requirement for public agencies providing electrical services.⁴ This was added at the request of several public agencies, who pointed out that they are subject to several provisions of law requiring open, noticed meetings, and provision of documents used in the conduct of their business to members of the public upon request. The Commission agrees that an exemption is appropriate for those agencies that make claims, provided that the agency is only providing one product. Should customers have concerns about the agency's claims, the Commission or the customer will be able to use the public processes available to obtain information necessary to evaluate the claims. The customer can also request the Commission's assistance by filing a request for an investigation (Cal. Code Regs., tit. 20, section 1230 et seq.) In any event, the Commission can choose to conduct the agreed-

⁴ There are a number of such agencies, such as irrigation districts and municipal utility districts, that currently provide such services in California.

upon procedures itself, should the Commission decide it is appropriate.⁵ However, once the agency chooses to sell more than one product for which it makes claims, the Commission believes that it should not be shielded from the verification requirements applicable to other retail providers, since to do so would provide these agencies with an economic advantage over other retail providers.

Subsection (c) of section 1394 is unchanged from the existing subsection (c) except that the reference to an audit is removed, and a reference to the agreed-upon procedures is substituted. This reflects the change already identified in proposed subsection (b).

Appendix B Energy Commission Certificate Program

This section contains the requirements for the Commission's proposed tradable certificate program. In order to understand how the program works, it is necessary to realize that all electricity sold at retail in California is physically the same and comes from a common pool formed by the western grid, regardless of how it was generated. Thus, regardless of the financial transaction between a retail customer and a retail provider, the electricity actually delivered to the customers may come from anywhere; as energy, it is indistinguishable from any other block of kilowatt hours.

Under the current regulations, specific purchases, which are identified by statute as transactions traceable to specific generating sources, must always incorporate a sale of electrical energy. That is, if a renewable generator sells to a wholesaler who in turn sells to a retail provider, the transaction between the wholesaler and the retail provider must include electrical energy. However, the statute is also unambiguous in saying that a retail provider does not need to match loads and resources on an hourly basis, but on an annual basis. Because electricity cannot be stored (except in batteries), this means that in the scenario above, the wholesaler doesn't have to sell the retail provider the *same* electrical energy he or she purchased from the renewable generator. In fact, the wholesaler could purchase output from a wind facility in January and sell a comparable amount of energy as wind energy in December. Obviously, the electrical energy purchased in January was consumed at that time, and the wholesaler is selling different electrical energy as wind energy in December. In addition, the statute refers to a tradable commodity system as one means of supporting claims of specific purchases; this language appears to permit, if not require, the separation of the kilowatt hours generated into kilowatt hours of electrical energy and kilowatt hours of a given fuel type attribute.

Because separation of the fuel type attribute and electrical energy is permissible under the statute, the Commission considered allowing full segregation when it conducted the original rulemaking in 1998, but decided to require that specific purchases be transactions

⁵ This is not an option for private companies, who are entitled to keep records of their transactions confidential, and who do not want the Commission to have access to that information.

involving electrical energy. The Commission believed that development of a workable tradable commodity system would take more time than was allocated to completing the first round of regulations. Market participants were eager to see the Commission adopt regulations specifying the format of the mandated disclosures, and taking time to develop a tradable commodity system seemed imprudent. In addition, several participants, including a consumer research group familiar with consumer response to deregulation expressed concern that implementing a program in which fuel type attribute and electrical energy could be sold entirely separately so early in the deregulation process would lead to consumer confusion.

During the past year, the Commission has developed a tradable certificate program that it believes will greatly improve the market for renewable energy characteristics, and eliminate the need to trace a contract path for electrical energy from a generating facility to a retail customer. A tradable program reduces the burdens on retail providers and other market participants by making kilowatt-hours of any desirable fuel type easier to buy and sell. The Commission's certificate program is also designed to ensure that the certificates created under the program represent the actual generation of a facility and cannot be used to deceive consumers about the characteristics of the electrical energy they are buying. In addition, the Commission believes that consumers are more sophisticated than when the deregulated market opened and understand that different types of electrical energy are indistinguishable from each other when that energy is delivered, and that it is the flow of money that determines which generator is supported by which consumers.

As a result, the Commission believes it is an appropriate time to implement its tradable certificate program under which electrical energy and the corresponding amount of fuel characteristic can be fully separated. Appendix B contains the requirements of that program. In sum, the Commission would make its certificates software available to all generators within the Western Systems Coordinating Council (or "WSCC", which under the statute is the geographic limits of the area in which generators subject to the program are located). Generators could use the Commission's certificates software to create unique certificates (called "certificates of specific generation") that they can sell as they sell the electrical output of their facility. Participating generators are required to report total generation and the serial number of and kWh denominated in each certificate to the Commission at least quarterly. More frequent reporting is an option the Commission added because participants in the Commission's SB 90 program report monthly, and the Commission believes that it is appropriate to allow those entities to use the same filing for both programs. The Commission will accept identification of these certificates by a retail provider in an annual report as evidence that the retail provider obtained the identified amount of fuel type attribute.

The Commission's certificates software will both create paper "Certificates of Specific Generation", each with a unique identification number, and provide automated reporting of quarterly generator output by certificate number to the Commission. Because the

certificates would be tradable apart from the generation itself, retail providers will be able to purchase electricity from one source and the fuel or technology characteristics from another. This should increase the fungibility of "green" characteristics, as well as dramatically simplify the process of tracing a fuel or technology characteristic back to a specific generating unit. Because the generator will have accounted for all generation and sales through the use of the Commission's certificates software and submitted the report to the Commission, verifying that the amount of specific purchases claimed by a retail supplier is accurate should be straightforward. The Commission would simply compare the certificate number provided by a retail supplier in its annual report to the information about the certificate provided in automated report provided using the Commission's certificates software. This obviates the need to have an auditor or accountant review the various sales contracts entered into between generators, wholesalers, and retailers.

The Commission considered allowing a private market in certificates to develop as an alternative to requiring the use of its certificates software to create certificates. However, with a private program, we have no way to ensure that the certificates are valid. Such a program would lack the mandatory generation reporting that is part of the Commission's program and allows Commission staff to confirm the consistency of certificates filed in an annual retail provider report with actual generation data from the identified facility. While we fully support the development of private market mechanisms in the restructured electricity market, use of these mechanisms to create tradable certificates would allow no verification of certificates. The Commission would be unable to ensure that the certificates represent a unique block of kilowatt hours that are not claimed by multiple retail suppliers. Therefore, this alternative was rejected in favor of Commission certificates, whose use requires the generators to report the necessary information. The Commission believes that the alternative selected is consistent with the objectives of the SB 1305 program of ensuring that consumers receive accurate information about the sources of the electricity they consume.

Subsection (a) of Appendix B states the general objectives of the program. Subsection (b) outlines the various elements of the program. Subsection (b)(1) states that the Commission will make the latest version of the Commission's certificates software available to all generators within the WSCC. However, there is one exception; the Commission will not supply the software to generators who sell their generating facility output to an investor-owned utility under the terms of a contract entered into prior to September 24, 1996 under the Public Utilities Regulatory Policies Act of 1978. The reason for this is that these contracts include a premium for renewable generation, and as utility ratepayers are paying the generator that premium, the generator should not be allowed to sell the renewable characteristic to another party (utility distribution companies cannot claim specific purchases).⁶ Again, the WSCC was selected as the

⁶ The same exclusion applies to the Commission's SB 90 program, under which some renewable generators are eligible to receive an incentive for their generation. The Commission wishes to maintain consistency between the programs, to the extent no conflict is created.

geographic area because SB 1305 it is the area in which specific purchases may be generated. (Pub. Util Code/398.4(j))

This section also identifies the elements of the certificates created by the Commission's certificates software. These certificates contain the following information: the serial number of the certificate, the kilowatt hours associated with each certificate, the facility name and unique identification number, the quarter in which the generation occurred, the type of fuel or technology used to generate the electricity, and the signature of the generator. These items provide any holder of the certificate with all of the necessary information to use the certificate to support a claim of specific purchases. The signature should provide assurance that the certificate is legitimate. A copy of a sample certificate is attached to this Initial Statement of Reasons.

Subsection (b)(2) explains how a generator can obtain a copy of the Commission's Certificates software. The information specified —name, unique facility identification number, facility address, name and telephone number of a designated contact, and the fuel type of the facility - are necessary for the Commission to be able to track the issuance of certificates by generators once they receive a copy of the Commission's certificates software. The capacity is needed because it provides another simple means for the Commission to check the veracity of claims—if more generation is claimed that can be accommodated by the facility's capacity, we will know there is a need to further investigate the validity of the claim.

Subsection (b)(3) establishes that retail providers may use certificates to support claims of specific purchases in the annual retail provider report. This section states that the retail provider must include the serial number of any such certificate in the annual report. This is necessary for Commission staff to compare the certificate with the generation information from the facility that is automatically reported to the Commission on a quarterly basis. This comparison lets us know that the certificate is valid and matches the certificate with the same number reported by the Commission's certificates software to us.

Subsection (b)(4) states that, in preparing its annual report to the CPUC, the Commission will find that certificates will verify that a retail provider has purchased the right to claim a quantity and type of generation from the facility identified in the certificate. This is a critical element of the program and should provide motivation for generators to participate. The Commission believes that certificates will make it much easier for retail providers to demonstrate that they have purchased a specified amount of kilowatt hours of a specific fuel type. Currently, the regulations require that an auditor audit the contract path of the kilowatt hours of electrical energy purchased back to the facility; this can be very complicated when there are multiple transactions involving different amounts of electricity that is bought and sold. Providing a certificate, however, should involve no tracing of transactions, as the Commission will be able to simply compare it to the

information in its database to ensure its validity. This should dramatically reduce the cost of providing an annual retail provider report as well as increase the value of renewable generation.

Subsections (b)(4)(A), (B), and (C) provide the conditions under which the Commission's certificates software must be used in order to ensure that the certificates can be used to support a claim of specific purchases. The first requirement is that the total amount of generation in each quarter equal or be greater than the amount of kilowatt hours identified in the certificates issued for that facility in that quarter. This ensures that certificates cannot be issued in an amount that exceeds the generating facility's total generation for each quarter. The Commission also addressed the issue of the size of the certificates and decided to allow the generator complete flexibility in selecting the amount of fuel type attribute he or she wishes to sell to each potential customer. The Commission considered several alternatives to this requirement, including saying that certificates should be issued in a specified number of kilowatt-hour increments, or that each sale of electrical energy must be accompanied by a certificate of the same number of kilowatt hours. However, specifying small increments (1 kWh, for example) would result in an unworkably large number of certificates. Selecting a larger number could prevent certificates from being used for smaller increments, even when the purchase was of a smaller amount of electrical energy. Requiring the certificates to match sales of electrical energy seems to unnecessarily limit the generator's flexibility to market and sell the fuel type attribute of the facility. The Commission selected the language contained in the proposal because it offers a reasonable solution to specifying the amount of kilowatt hours in the certificates.

Subsection (b)(4)(B) also requires filings to the Commission each quarter. These filings must contain the total generation for the previous quarter and an identification of the serial numbers of all certificates created during the previous quarter and the amount identified on each certificate. This information is necessary for Commission staff to verify the accuracy of certificates when their serial numbers are provided to us in an annual retail provider report. Finally, subsection (b)(4)(C) states that generators must provide an independent third-party meter read of the facility meter upon Commission request. The Commission decided not to require regular provision of meter reads (although the Commission does do so for its Renewable Energy Program, which affects many of the same facilities as SB 1305). However, the Commission does retain the authority to ask for such reads, and specifies that generators must keep copies of meter reads for two years after the generation occurs. This time was selected because it represents the window during which the Commission would be investigating any concerns with or discrepancies in claims based on such generation.

Appendix C Agreed-Upon Procedures

This Appendix establishes the requirements for the verification process applied to each annual retail provider report. Currently, the Commission's regulations implementing SB 1305 require an audit of the report. However, as discussed above, retail providers have informed us that the audit requirement is difficult to comply with, primarily because of lack of clarity and high cost associated with conducting a complete audit of nonfinancial information, and because of the unfamiliarity of most auditors with electricity transactions. Moreover, audits require a degree of assurance that is quite high, which in turn increases the costs associated with compliance. After retail providers explained their concerns to Commission staff, the Commission hired Pricewaterhouse Coopers to develop an alternative approach to verification. Pricewaterhouse Coopers drafted "agreed-upon procedures", which specify the actions an auditor will take to verify the accuracy of the report. Basically, the procedures involve "agreeing" (which is accounting terminology for "making sure the numbers match") information from program participants' internal information to information reported on their annual reports to the Commission and then comparing a sample of transactions selected at random to the characterization of those transactions used by the retail provider in preparing the annual report. The procedures address purchases, both from pools and from non-pool sources, sales, and labels. In addition, the Appendix establishes the procedures applicable to pools that a retail supplier references in an annual report.

The Commission considered several alternatives to this proposed amendment. First, we considered leaving the language as is. The current requirement (an audit) is similar to a performance standard, as each auditor is free to develop the procedures he or she believes are appropriate to support his or her opinion that the annual retail provider report is materially correct with respect to the information audited. Under Government Codes section 11346.2(b)(4) the Commission is required to consider the use of performance standards as an alternative to the imposition of prescribing specific procedures. However, as discussed above, retail providers informed the Commission that auditors had difficulty in performing the required audit for the types of nonfinancial information and transactions that are the subject of the existing audit requirement. This apparently is due to the fact that most auditors have difficulty completing a traditional audit of the nonfinancial information specified in our regulations. For an audit opinion to be rendered, many auditors were describing the need to perform extensive testing that out we believed are not cost-effective. Audits require a degree of assurance that is quite high, which in turn increases the costs associated with compliance. Consultation with retail providers as well as with auditors convinced us that verification would be easier if the Commission specified the specific procedures to be performed to identified information. The Commission then hired Pricewaterhouse Coopers to help develop these procedures and held workshops on them in late 1999 and early 2000. Parties at those workshops appeared to agree that compliance with the agreed-upon procedures would be less expensive and less complicated than complying with the current audit requirement.

Therefore, the Commission has initially decided not to retain the current requirement, but to implement the kind of alternative procedure developed during the past year.

In addition, the Commission considered deleting the verification requirement. During the 1997 rulemaking, we initially did not include a verification requirement. In fact, verification is not mentioned in the statute. The only requirement is that we prepare a report for the CPUC containing a "comparison" of the claims made by the retail provider with generation data provided by system operators, and with purchase and sales data provided in the annual retail provider report. However, as the rulemaking progressed, staff and the retail providers that were participating agreed that a simple comparison would only let us know if a single generation source had been claimed in excess of its generation. Many, if not most, other types of inaccuracies in a retail providers claims would not be detectable. These include situations in which a retail provider erroneously claims a purchase from a renewable source, and due to the fact that the entire output of the facility is not claimed (many renewable generators sell some of their facility output as generic power), total generation claimed by retail providers does not exceed the total generation reported by the system operator. Retail providers wanted the Commission's report to contain a meaningful assessment of their claims, and so encouraged the Commission to adopt an audit requirement.⁷ No participant argued against having a verification process.

We believe that those concerns are still valid and support maintaining a verification process. We believe that the proposed amendments would implement procedures that would uncover most, but not all, material errors, fraud or misrepresentation, whereas, the minimal report described in the statute would not. The Commission therefore believes that some kind of verification is necessary to meet the objectives of the statute in ensuring that consumers receive accurate information about the sources of electricity they consume. The proposed amendments therefore appear preferable to either deleting the existing audit requirement or deleting verification altogether.

Subsection (a) of Appendix C states that the Appendix contains the procedures applicable to each electricity product for which a claim of specific purchases was made during the previous calendar year, pursuant to Section 1394 (b)(1) of the Commission's regulations. In addition, it specifies that the procedures in subsections (c)(1), (2), and (3) are applicable to all purchases, sales, and labels associated with a particular electricity product. Finally, it identifies that the procedures in subsection (4) are applicable to pool transactions. These statements provide an overview for the reader of the structure of the Appendix and its requirements.

⁷ Retail providers were unanimously opposed to a Commission audit, due to concerns about the confidentiality of their business records. As a result, we required an independent third-party audit of the sensitive data, and the provision of an attestation that the audit demonstrated that the annual report contained no material misrepresentations of fact.

Subsection (b) of Appendix C requires the retail provider to engage an independent accountant or certified internal auditor to perform the report. The reason the Commission selected these qualifications is discussed below in the section addressing subsection (b)(1). This subsection also states that the procedures identified must be performed in accordance with adopted professional standards governing attestation engagements or auditing standards. These standards, adopted by the American Institute of Certified Public Accountants, cover objective testing by independent accountants of financial and nonfinancial information. They provide a lower level of assurance than would result from an audit of such information. Based on consultations with Pricewaterhouse Coopers and public input, the Commission accepted these standards as being best suited to provide cost-effective assurances to the Commission that the report information is reasonably accurate.

Subsection (b)(1) additionally specifies that the professional conducting the procedures must be either a certified public accountant with the AICPA or a certified internal auditor with the Institute of Certified Internal Auditors. This is a modification of the current regulations which require the use of an AICPA member in existing subsection (b)(1)(A) of section 1394. The Commission believes it is appropriate to expand the eligibility for conducting the procedures to internal auditors, but also to require that the entity performing the verification meet the high standards of independence and professional conduct required by the Institute of Certified Internal Auditors, as these individuals are required to meet standards of professional conduct similar to those required of certified public accountants. This requirement will help ensure that the procedures are performed in a competent manner and that the Commission can reasonably rely on the auditor's conclusions.

Subsection (b)(2) describes the allowable sampling techniques that the auditor or accountant can use. Sampling is a standard technique used to ascertain the accuracy of information reported. The guidance established in AICPA AU Section 350 is used by accountants to apply sampling techniques to determine sample size, testing considerations, and conclusions from the performance of audit-type tests of transactions or other sampling units. The parameters values selected in this section were arrived by the Commission based on input from consultation with Pricewaterhouse Coopers and public input. The 90% confidence level was selected because the Commission believes that is a reasonable value; going higher would require use of larger sampling size, which would increase the cost of the agreed-upon procedures. Using a lower value would raise questions about the ability of the sampling process to verify the accuracy of the information presented in the report. The other values established were selected to result in reasonable assurances using a sample size that is not unreasonably large (and hence costly) for these types of transactions. Higher confidence levels and narrower deviation bands were discussed at workshops and rejected; the values in the proposed regulations reflect the judgment of the Commission, based upon input from workshop participants

and Pricewaterhouse Coopers that they will achieve an appropriate level of assurance at a reasonable cost.

Subsection (c) establishes the actual procedures for each type of transaction. Subsection (c)(1) addresses purchases. It first establishes the information that auditor will be reviewing in performing the procedures. Specifically, it requires the auditor to review the information collected by the retail provider to prepare Schedules 1 and 2B, including contracts, invoices, receipts, and other supporting data. The first procedure requires the auditor to "agree" (which is accounting terminology for "make sure it matches") the following information about specific purchases listed on Schedule 1 with the information used to prepare Schedule 1: facility or pool name, unique identification number, certificate number (if applicable), fuel type, and kilowatt hours purchased, resold or consumed on site. The auditor is also required to agree the purchases and resales/on-site consumption data for generic purchases from the information used to prepare Schedule 1 to Schedule 1. The auditor is also required to test the calculations on Schedule 1. These procedures should ensure that the information has been properly transferred from the whatever report or collection of certificates, contracts, and invoices the retail provider uses to prepare Schedule 1 to Schedule 1.

Subsection (c)(1)(B)(i) directs the auditor to select a sample of purchases, using the sampling techniques described above, and agree the various pieces of information from the information collected to prepare Schedule 1 with the information on the invoices, receipts, and contracts with respect to the facility identification number, certificate number or names of the pool, kilowatt hours purchased, and the fuel type.⁸ This provides a check on whether the information used to prepare Schedule 1 was correctly accounted for in preparing Schedule 1.

Subsection (c)(1)(B)(ii) also requires that the auditor agree the kilowatt hours identified for facilities owned by the retail provider with independent third-party meter reads, or, in the alternative, to confirm that the retail provider conducts another internal auditing procedure that assures that facility production agrees with the claims identified on Schedule 1. This allows confirmation of the fact that the generation claimed actually occurred.

Subsection (c)(1)(B)(iii) states that the auditor shall agree the date of generation from the billing invoice to the information used to prepare Schedule 1. This requirement helps ensure that the information provided to the Commission on Schedule 1 is accurate.

⁸ The Commission discussed these requirements with auditors and accountants who used the agreed-upon procedures for retail providers participating in the Commission's Customer Credit program earlier this year. They informed us that most retail providers prepare a draft Schedule, by summing from a list of all purchase transactions identified by invoice or contract number. This allows the auditor to select a sample of those transactions for sampling. If such a summation of transaction is not available, sampling is not allowed under the terms of Appendix C, and the auditor will need to verify each and every transaction.

Finally, subsection (c)(1)(C) states that the auditor shall agree the net kilowatt hours purchased as shown on Schedule 1 to net kilowatt hours purchased as shown on Schedule 2B. This conforms that no errors in copying figures from one schedule to another has occurred.

Subsection (c)(2) of the Appendix addresses the procedures to be used to verify the sales information provided in the annual retail provider report. Subsection (c)(2)(A) requires the auditor to agree the sales by product and fuel type from the information used to prepare Schedule 2A to Schedule 2A as well as verify the mathematical accuracy of Schedule 2A. This should ensure that the information provided on Schedule 2A has been properly transferred from whatever documentation the retail provider used to draft schedule 2A to Schedule 2A. Subsection (c)(2)(B) requires the auditor to select a sample of sales and compare the information from that sample to the customer's billing statement. This provides a check on whether the information used to prepare Schedule 2A was properly accounted for on Schedule 2A.

Subsection (c)(3) addresses the annual power content label that the retail provider has provided to its customers. This subsection generally requires the auditor to review the annual label and confirm that the percentages identified are the same as those derived by applying the equation in subsection (d)(2)(A) of section 1393 to the information provided in Schedule 2A. This will show whether the retail provider has followed the requirements of the regulations in preparing the annual label.⁹ The auditor is also required to note whether the percentages calculated using the information provided on Schedule 2A are within one percent of the percentages identified on the annual label. The Commission believes that there may be small inaccuracies due to rounding; and believes that if the errors are one percent or less, they do not need to be reported to us. However, we wish to retain the discretion to investigate anything greater than that in preparing our annual report to the CPUC; hence the requirement that such a discrepancy be noted as an exception in the auditor's report to us. In the event that the percentages in the annual label vary by more than five percentage points from the percentages on any general disclosure, the auditor is also required to note whether the retail provider included the general disclosure that varies the most from the annual disclosure and whether the required explanation of the discrepancy is found on the annual label.

Subsections (c)(4)(A) and (B) establish the requirements for pools. As pools do not operate as retail suppliers, the Commission cannot require that the pool operators file with the Commission. However, to the extent that a retail provider wishes to claim kilowatt hours purchased from a pool, the Commission needs to have certain information about the pool in order to verify that the claims made by the retail provider match his or

⁹ The Microsoft Excel[®] file available from the Commission's web site contains a Schedule 2C that will automatically calculate the label percentages from the information on Schedule 2A. Use of the Schedule is not mandatory, but retail providers or auditors may choose to use it to establish or confirm the fuel type attribute percentages identified on the annual label.

her purchases and sales. Therefore, we require that a retail provider file information about the pool if the retail provider wishes to use purchases from that pool as support for a claim of specific purchases. The information requires the use of an auditor and is similar to that we require in the annual retail provider report, so is therefore included in the agreed-upon procedures.

Subsection (c)(4)(A)(i) requires the auditor to agree the purchases into the pool by facility name, fuel type, certificate number, and kilowatt hours from the information used to prepare Schedule 3 to Schedule 3 itself. This should ensure that the information has been properly transferred from whatever information the pool owner used to prepare Schedule # to Schedule # itself. Subsection (c)(4)(A)(ii) requires the auditor to select a sample of purchases using the sampling techniques described above and perform several procedures using the samples. First, the auditor must agree the unique facility identification number, kWh, certificate number (if any), and fuel type from the information used to prepare Schedule 3 with the invoices. In addition, the auditor must agree the kWh identified for facilities owned by the retail provider with independent third-party meter reads, or confirm that the retail provider has another internal auditing procedure that assures that production matches generation claims. Finally, the auditor is directed to agree the date of generation from the invoice to the information used by prepare Schedule 3.¹⁰ These procedures offer a check on whether the information used to prepare Schedule 3 was correctly accounted for in preparing Schedule 3.

Subsection(c)(4)(B) addresses purchases from the pool. It directs the auditor to verify that the purchases (by fuel type, purchaser, and kWh have been properly transferred from the information used to prepare Schedule 4 to Schedule 4 itself. This should ensure that the information provided on Schedule 4 has been properly transferred from whatever documentation the pool owner used to draft schedule 4 to Schedule 4. In addition, the auditor is required to select a sample of purchase transactions using the sampling guidelines discussed above, and compare the information specified for each transaction in the information used to prepare Schedule 4 to the billing statement, noting any exceptions. This provides a check on whether the information used to prepare Schedule 4 was properly accounted for on Schedule 4.

¹⁰ The Commission discussed these requirements with auditors and accountants who used the agreed-upon procedures for retail providers participating in the Commission's Customer Credit program earlier this year. They informed us that most retail providers prepare a draft Schedule, by summing from a list of all purchase transactions identified by invoice or contract number. This allows the auditor to select a sample of those transactions for sampling. If such a summation of transaction is not available, sampling is not allowed under the terms of Appendix C, and the auditor will need to verify each and every transaction.

Attachment 1

Schedules Referenced in Appendix C for Filing the Annual Retail Provider Report

Annual Report to the California Energy Commission

for the year ending December 31, XXXX

SCHEDULE 1: POWER PURCHASES AND RESALES

Applicable to: Retail Providers (Power Source Disclosure Program)

INSTRUCTIONS: Enter information about power purchases supporting all electricity products for which your company is filing the Annual Report. If you need additional rows, add them from the INSERT menu. Note: if the power was purchased from a power pool or registered renewable wholesaler that will be filing an Annual Report with the Energy Commission (schedules 3 and 4), identify the name of the pool / wholesaler under "Facility Name."

SPECIFIC PURCHASES							
Facility Name	Fuel Type	EIA ID Number ¹	CEC ID Number ²	Genreport Certificate Number ³	Gross kWh Purchased or Generated	kWh Resold or Self- Consumed	Net kWh Purchased
							-
							-
							-
							-
							-
							-
							-
							-
							-
							-
							-
							-
							-

GENERIC PURCHASES		
Gross kWh Purchased	kWh Resold	Net kWh Purchased
		-
Total Net Purchases		-

¹Please enter the U. S. Energy Information Administration identification number for the generating facility, if available.

² Please enter the Energy Commission Renewable Energy Program Registration number for the generating facility, if applicable.

³CEC assigned unique number for the Certificate of Specific Generation.

Provider No. _____

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for the year ending December 31, XXXX

SCHEDULE 2A: RETAIL SALES

Applicable to: Retail Providers (Power Source Disclosure Program)

Product 1	
Product 2	
Product 3	
Product 4	
Product 5	
Product 6	

	MWh Sold Product 1	MWh Sold Product 2	MWh Sold Product 3	MWh Sold Product 4	MWh Sold Product 5	MWh Sold Product 6	TOTALS ¹
Specific Purchases							
Renewable							
Biomass & Waste							# #####
Geothermal							# #####
Small hydroelectric							# #####
Solar electric							# #####
Wind							# #####
Coal							# #####
Large hydroelectric							# #####
Natural Gas							# #####
Nuclear							# #####
Other							# #####
Total Specific Purchase Power Sold	-	# #####	# #####	# #####	# #####	# #####	# #####
Generic Power Sold							# #####
Total Retail Sales	# #####	# #####	# #####	# #####	# #####	# #####	# #####

¹ If total retail sales do not match total "Net kWhs Purchased" from Schedule 1, please provide an explanation in an attachment to your filing. If the difference is due to losses, it is sufficient to simply state this.

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SCHEDULE 2B: BALANCING SHEET

Applicable to: Retail Providers (Power Source Disclosure Program)

INSTRUCTIONS: Total your specific purchases (by fuel type) and generic purchases from Schedule 1 and enter these numbers in the first column. The remainder of this sheet is automated. If for any fuel type (including generic) the numbers in the Difference column are different than zero, please provide an explanation for this imbalance of supply and load.

	Net Purchases (kWh)	Retail Sales (kWh)	Difference (kWh)
Specific Purchases			
Renewable			
Biomass & Waste		-	-
Geothermal		-	-
Small hydroelectric		-	-
Solar electric		-	-
Wind		-	-
Coal		-	-
Large hydroelectric		-	-
Natural Gas		-	-
Nuclear		-	-
Other		-	-
Sold	-	-	-
Generic Power Sold	-	-	-
Total Retail Sales	-	-	-

EXPLANATION OF DISCREPANCIES:

Provider No. _____

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SCHEDULE 3: POWER SOLD INTO POOL

Applicable to: Power Pools (Power Source Disclosure Program)

INSTRUCTIONS: Enter information about the generators that sold power into your company's power pool. If you need additional rows, add them from the INSERT menu.

SELF CHECK: The total amount of power sold into the pool as shown in Schedule 3 should equal or exceed the total amount of power sold out of the pool as shown in Schedule 4. As a check, add the total amount of energy sold into the pool per fuel type for all facilities shown on Schedule 3. The total amount of sales into the pool by fuel type should equal or exceed the total amount of fuel sold out of the pool by fuel type as shown on Schedule 4. Please make this check, although there is no specific worksheet for displaying the data. If the data for Schedule 3 and 4 do not agree, please provide a written explanation for the difference.

SPECIFIC PURCHASE POWER - POWER SOLD AS A DEFINED FUEL TYPE					
Facility Name	Fuel Type	EIA ID Number ¹	CEC ID Number ²	GenreportCe rtificate Number ³	kWh Sold into Pool

Generic kWh Sold into Pool

Total kWh Sold into Pool

¹ Please enter the U. S. Energy Information Administration identification number for the generating facility, if available.

² Please enter the Energy Commission Renewable Energy Program Registration number for the generating facility, if applicable.

³ CEC assigned unique number for the Certificate of Specific Generation.

Provider No. _____

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SCHEDULE 4: Power Purchased out of Pool

Applicable to: Power Pools (Power Source Disclosure Program)

INSTRUCTIONS: Enter information about the power purchased out of your power pool. If you need additional columns, add them from the INSERT menu.

Name of Purchaser¹								
Identification Number								
	kWh	kWh	kWh	kWh	kWh	kWh	kWh	
	Purchased	Purchased	Purchased	Purchased	Purchased	Purchased	Purchased	TOTALS
Purchases Eligible for Customer Credit								
Renewable								
Biomass & Waste								# #####
Geothermal								# #####
Small hydroelectric								# #####
Solar electric								# #####
Wind								# #####
Other Specific Purchases								
Renewable								
Biomass & Waste								# #####
Geothermal								# #####
Small hydroelectric								# #####
Solar electric								# #####
Wind								# #####
Coal								# #####
Large hydroelectric								# #####
Natural Gas								# #####
Nuclear								# #####
Other								# #####
Generic Power Purchases								# #####
Total Purchases from P	# #####	# #####	# #####	# #####	# #####	# #####	# #####	# #####

¹Show the CEC Register Renewable Provider number, if applicable, or else enter the CPUC Electric Service Provider registration

Provider No. _____

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for the year ended December 31, XXXX
ATTESTATION FORM

Applicable to: All participants in the Power Source Disclosure Program

I, (print name and title) _____,
declare under penalty of perjury, that the statements contained in Schedules
_____ are true and correct and that I, as an authorized agent of (print
name of company) _____, have authority to submit this
report on the company's behalf. I further declare that the generating facility
output claimed as specific purchases as shown in these Schedules were, to the
best of my knowledge, sold once and only once to the retail consumers of
_____.

Company/Retail Provider Name

Signed: _____

Dated: _____

Executed at: _____

CONTACT INFORMATION

Name

Title

Company Name

Address

City, State, Zip

Phone

Fax

E-mail

Provider No. _____

Attachment 2

Sample Certificate of Specific Generation

Number **1001** series **2002**
5000 kWh
Wind

SAMPLE



Certificate of Specific Generation

For purposes of disclosure and verification of sources of electrical generation under Article 14, Chapter 2.3 of Part 1 of the California Public Utilities Code.

This certificate has no stated or intrinsic value.

I declare and affirm the following:

(1) **Picacho 4** is a generation facility as defined in Title 20, Division 2, Chapter 3, Article 5, Section 1391, California Code of Regulations, and that I am authorized by its owners and operators to make certificates such as this. The identification number for this facility is **7845**. It is located in **Arizona**.

(2) This facility qualifies for designation as **Wind**, according to the categories described in Title 20, Division 2, Chapter 3, Article 5, Section 1391, California Code of Regulations.

(3) During the quarter **April** through **June** of the year **2002**, the above named generation facility generated a quantity of electricity, of which kilowatt-hours nominally identified as numbers **1** through the **5000**, not necessarily in time sequence, for a total of **5000 kWh** are attested by this document for purposes of verifying a claim of specific purchase as that term is defined by Title 20, Division 2, Chapter 3, Article 5, Section 1391, California Code of Regulations. This electricity was delivered into a transmission system that is part of or connected to the systems of the Western States Coordinating Council. I understand that the holder of the original copy of this document may use it to support a claim of having sold consumers electricity traceable to **Picacho 4** in the amount of **5000 kWh** and I affirm to the California Energy Resources Conservation and Development Commission and any such holder that I neither have made nor will make any other documentation by which someone could support a claim to having sold consumers this same electricity.

Signed _____, authorized agent
of **Picacho 4**

Print Name _____
Date _____

SAMPLE

Any representations of fact on this certificate are made by the signatory party and not by the State of California or the California Energy Commission. For questions concerning this certificate, call the Energy Commission at 916-654-5180 or e-mail sb1305@energy.state.ca.us.